

exception did not alter any of the burdensome collateral consequences previously held to not require an allocution, as the Court of Appeals noted that it arose from the “truly unique nature of deportation”, stating “there is nothing else quite like it.” *Id.* at 196.

In dicta, the Court of Appeals has stated that when a consequence is deemed collateral, if the defendant can show that he plead guilty in ignorance of a consequence and can convincingly show that the newly discovered information would have caused a change of heart, the motion cannot simply be defeated by labelling the consequence “collateral”. *People v. Gravino*, 14 N.Y.3d 546, 559 (2010). In *Gravino*, it was shown that the defendant did not know that SORA registration was a component, and a motion to withdraw the plea was made as this led the defendant to change his mind about pleading guilty. Even here, however, the court held that the defendant’s lack of knowledge prior to sentencing of the SORA registration did not detract from the plea’s voluntariness because SORA registration was nevertheless a collateral consequence.

Here, the requirement to provide a DNA sample to the government is a consequence that is the result of a guilty plea to any misdemeanor or felony. However, the uniformity of a consequence does not automatically deem a consequence direct, as seen by the decisions of the Court of Appeals. For example, the loss of the right to vote applies to anyone convicted of a felony. And while Defendant notes that there is a possibility of being held in custody until one submits a DNA sample, such custody is incongruous with that of a determinate sentence of imprisonment or deportation. Rather, it is more akin to failure to register according to the requirements of the SORA,

a violation of which may be prosecuted as a crime. The consequence of the plea is the requirement to provide a sample, which does not include incarceration, unless Defendant obstructs government administration by refusing to provide the sample. This is a critical distinction that Defendant glosses over. Further, exposure to future criminal prosecutions is not a direct consequence, and again finds the most similarity to SORA registrations. Defendant states that these two consequences are “by definition” direct consequences; however, New York jurisprudence states otherwise. Further, the court system is not in control of the processes of the procurement of the DNA sample, what is done with the sample, or any component of the State DNA Index.

As a collateral consequence, the requirement to submit a DNA sample deserves no exception to the rule. *Gravino*, which stands for the proposition that lack of knowledge of SORA registration does not impede voluntariness, includes dicta in relation to rare circumstances. However, *Peque*, decided 3 years later, makes no mention of this and explicitly opines on the unusualness of deportation as a collateral consequence necessitating allocution. Further, the desire to not provide a DNA sample is not a noble desire nor does it invoke a liberty interest. Rather, it is a desire born from a motivation to evade justice from future and prior acts against society. As such, it deserves no special consideration from the court, relying upon a scant paragraph of dicta, and the lack of an allocution does not impact the voluntariness of Defendant’s plea.

II. Dismissal of the Indictment is Not in the Interest of Justice

Applicant Details

First Name **Thomas**
 Middle Initial **W**
 Last Name **Munson**
 Citizenship Status **U. S. Citizen**
 Email Address munsont@pennlaw.upenn.edu

Address

Address

Street

3 Peter Cooper Rd 14B

City

New York

State/Territory

New York

Zip

10010

Country

United States

Contact Phone Number **646-943-0001**

Applicant Education

BA/BS From **University of Pennsylvania**
 Date of BA/BS **May 2018**
 JD/LLB From **University of Pennsylvania Carey Law School**

<https://www.law.upenn.edu/careers/>

Date of JD/LLB **May 15, 2023**

Class Rank **School does not rank**

Law Review/Journal **Yes**

Journal(s) **University of Pennsylvania Journal of Constitutional Law**

Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Mayson, Sandra
sgmayson@law.upenn.edu

Mayeri, Serena
smayeri@law.upenn.edu
215-898-6728

McClellan, Cara
caralm@law.upenn.edu
215-746-2164

This applicant has certified that all data entered in this profile and any application documents are true and correct.

3 Peter Cooper Rd. Apt. 14B
New York, NY 10010

Thomas Munson

munsont@pennlaw.upenn.edu
(646) 943-0001

The Honorable Kiyo Matsumoto
United States District Court
Eastern District of New York
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, New York 11201

Dear Judge Matsumoto,

I am a soon-to-be graduate of the University of Pennsylvania Carey Law School writing to apply for a clerkship in your chambers for the 2025-2026 term, or any other term thereafter. I am also a lifelong New Yorker, and this fall, I will begin a litigation fellowship with the New York Civil Liberties Union.

I hope that the skills I gain as a district court clerk will make me a stronger advocate and better federal litigator. In addition to my clinic and professional experiences, I have consistently sought out coursework to deepen my knowledge of civil rights and antidiscrimination law. One such course, Constitutional Litigation, covered the majority of topics taught in typical Federal Courts class, but with a particular focus on federal civil rights litigation. As a clerk, I will lean on these experiences, coursework, and on my upcoming fellowship with the NYCLU to inform the perspectives and legal skills that I bring to any given case.

Enclosed are copies of my resume, transcript, a writing sample, and letters of recommendation from Professor Sandra Mayson, Professor Cara McClellan, and Professor Serena Mayeri. Attached to this cover letter is the contact information for my recommenders and for three additional references. Please let me know if any other information would be useful. Thank you for your time and consideration.

Sincerely,

Thomas Munson

3 Peter Cooper Rd. Apt. 14B
New York, NY 10010

Thomas Munson

munsont@pennlaw.upenn.edu
(646) 943-0001

REFERENCES

Letters of Recommendation:

Sandra Mayson (my professor for Criminal Law and an upper-level seminar)
Professor of Law
University of Pennsylvania Carey Law School
215-495-4642
sgmayson@law.upenn.edu

Cara McClellan (my professor and supervisor for the Civil Practice Clinic, Fall 2022, and the Advocacy for Racial and Civil (ARC) Justice Clinic, Spring 2023)
Director Advocacy for Racial and Civil (ARC) Justice Clinic
Assoc. Practice Professor of Law
University of Pennsylvania Carey Law School
215-746-2164
caralm@law.upenn.edu

Serena Mayeri (my professor for Employment Discrimination and an upper-level seminar)
Professor of Law and History
University of Pennsylvania Carey Law School
215-898-6728
smayeri@law.upenn.edu

Additional References:

David Rudovsky (my professor for Evidence and for Constitutional Criminal Procedure)
Senior Fellow
University of Pennsylvania Carey Law School
215-901-6894
drudovsk@law.upenn.edu

Seth Kreimer (my professor for Constitutional Law and for Constitutional Litigation)
Kenneth W. Gemmill Professor of Law
University of Pennsylvania Carey Law School
215-898-7447
skreimer@law.upenn.edu

Molly Griffard (one of my supervisors at the Legal Aid Society, Jan 2022 – July 2022)
Staff Attorney
Law Reform and Special Litigation Unit
The Legal Aid Society
314-435-0214
mgriffard@legal-aid.org

3 Peter Cooper Rd. Apt. 14B
New York, NY 10010

Thomas Munson

munsont@pennlaw.upenn.edu
(646) 943-0001

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA

Juris Doctor, *magna cum laude*, May 2023

Honors: Toll Public Interest Fellow – Highly selective scholarship awarded based on demonstrated commitment to public service, academic record, and potential for leadership in the legal community
Journal of Constitutional Law, Associate Editor – Vol. 24

Activities: Democracy Law Project, Board Member (2021-22), Student Volunteer (2020-21)
Civil Rights Law Project, Student Volunteer (2020-21)

University of Pennsylvania College of Arts and Sciences, Philadelphia, PA

Bachelor of Arts in Economics, May 2018

EXPERIENCE

The New York Civil Liberties Union, New York, NY

September 2023 – 2024 (expected)

Penn Carey Law Postgraduate Fellowship Program

- Awarded one-year project-based legal fellowship to investigate and litigate issues related to discriminatory policing and police misconduct in New York City with a focus on vehicle stops and police stops on public transportation

Penn Carey Law School, Advocacy for Racial and Civil Justice Clinic, Philadelphia, PA

Spring 2023

Certified Legal Intern

- Provided legal support to community members in the Philadelphia region organizing to demand redress for racial subordination on issues related to employment discrimination, housing equity, and police accountability

Penn Carey Law School, Civil Practice Clinic, Philadelphia, PA

Fall 2022

Certified Legal Intern

- Represented low-income clients in federal and state matters related to employment discrimination and consumer debt

The Legal Aid Society, Criminal Defense Practice, Special Litigation Unit, New York, NY

January – July 2022

Legal Intern

- Worked under the supervision of Legal Aid staff attorneys on litigation and legislation projects related to discriminatory policing, jail and prison conditions, and the rights of protesters
- Conducted legal research and wrote memoranda on constitutional law, complex litigation, and discovery

Penn Carey Law School, Philadelphia, PA

Summer 2021 – Spring 2023

Research Assistant for Professor Sandra Mayson

- Wrote legal memoranda on constitutional and statutory issues related to bail and pretrial detention
- Catalogued, transcribed, and analyzed archival documents to support Professor Mayson's legal scholarship

Philadelphia Lawyers for Social Equity, Philadelphia, PA

Summer 2021

Legal Intern

- Assisted individuals with criminal convictions in completing their pardon applications
- Wrote comprehensive legal memoranda on constitutional issues related to criminal record expungement

New York County District Attorney's Office, New York, NY

June 2018 – February 2020

Trial Preparation Assistant

- Assisted attorneys with grand jury and trial preparation, including reviewing discovery materials, filing documents with the clerk offices in New York Supreme Court, and scheduling witness testimonies

University of Pennsylvania Department of Political Science, Philadelphia, PA

Fall 2015 – Spring 2018

Research Assistant for Professor Daniel Hopkins

Federal Trade Commission, Bureau of Competition, Washington, DC

Summer 2017

Paralegal Intern

INTERESTS: New York Knicks basketball, baking homemade pizza, biking, movies

Record of: Thomas W Munson
Penn ID: 72144253
Date of Birth: 04-MAR
Date Issued: 10-MAY-2023

The University of Pennsylvania

U N O F F I C I A L

Page: 1

Level:Law

Primary Program

Program: Juris Doctor
Division : Law
Major : Law

Public Service/Pro Bono Requirement Satisfied

SUBJ NO. COURSE TITLE SH GRD R

SUBJ NO.	COURSE TITLE	SH GRD	R
INSTITUTION CREDIT:			R Institution Information continued:
Fall 2021			
Law			
LAW 659	Employment Discrimination (Mayeri)	3.00 A	
LAW 674	Constitutional Litigation (Kreimer)	4.00 A	
LAW 828	Journal of Constitutional Law - Associate Editor	1.00 CR	
LAW 914	Power, Injustice, and Change in America (Sutcliffe)	2.00 A	
LAW 982	History and Theory of Contract Law (Farr)	3.00 A-	
LAW 998	Juvenile Justice Seminar (Feierman/Levick)	3.00 A	
Ehrs: 16.00			Ehrs: 16.00
Spring 2021			
Law			
LAW 501	Constitutional Law (Kreimer) - Sec 5/6	4.00 A	
LAW 504	Torts (Baker) - Sec 5	4.00 A-	
LAW 510	Legal Practice Skills (Gowen) - Sec 5	2.00 CR	
LAW 512	Legal Practice Skills Cohort (Weiss)	0.00 CR	
LAW 533	Intro to Us Privacy Law: The Lens of Race (Allen)	3.00 A	
LAW 695	Land Use Law (Pritchett)	3.00 A-	
Ehrs: 16.00			Ehrs: 12.00
***** CONTINUED ON NEXT COLUMN *****			
Fall 2022			
Law			
LAW 6520	Civil Practice Clinic (Rulli/Spiegel/McClellan)	7.00 A	
***** CONTINUED ON PAGE 2 *****			

Record of: Thomas W Munson
 Penn ID: 72144253
 Date of Birth: 04-MAR
 Date Issued: 10-MAY-2023

U N O F F I C I A L

Page: 2

The University of Pennsylvania

Level:Law

SUBJ NO.	COURSE TITLE	SH GRD	R
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Institution Information continued:

LAW 6960	Constitutional Criminal Procedure (Rudovsky)	3.00 A	
LAW 9160	Criminal Justice Reform (Mayson/Bazelon)	3.00 A	
Ehrs: 13.00			

Spring 2023

Law			
LAW 6710	Advocacy for Racial and Civil Justice Clinic (McClellan)	7.00 A	
LAW 9590	Dobbs v. Jackson Women's Health Organization (Mayeri)	3.00 A	
LAW 9810	Education and Disability Law (Harris)	3.00 A+	
Ehrs: 13.00			

***** TRANSCRIPT TOTALS *****

Earned Hrs	
TOTAL INSTITUTION	86.00
TOTAL TRANSFER	0.00
OVERALL	86.00

***** Comments *****

Senior Writing Requirement fulfilled through
 Criminal Justice Reform (Mayson)

***** CONTINUED ON PAGE 3 *****

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

May 11, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Applicant Thomas Munson

Dear Judge Matsumoto:

It is a pleasure to write this letter in support of Thomas Munson's application to clerk in your chambers. Thomas is a humble, driven, and talented advocate who aspires to become a civil-rights litigator and has developed his lawyering skills with singular focus during law school. His command of legal research, reasoning, and writing—along with his good humor—will make him a wonderful law clerk.

I have known Thomas since I taught him Criminal Law in the fall semester of his 1L year. Because the Covid pandemic was in full swing, that class met in groups of twenty students and I got to know Thomas well. He subsequently worked as a research assistant on several of my scholarly projects and took a seminar that I co-teach, Criminal Justice Reform and Progressive Prosecution. Thomas and I have also talked at length about his background and career goals.

Driven by his passion for civil rights work, Thomas has taken every opportunity in law school to develop the skills that will make him both an excellent judicial clerk and a great lawyer. His commitment to tackling inequality in legal systems arose out of his experience working for the Manhattan District Attorney before law school. Thomas took that job because of his desire to work in the public interest, but was shaken by the casual brutality that he witnessed in the criminal legal system's day-to-day operations. As anyone who has worked in a local courthouse knows, the effects of structural racism and inequality are on full display there. Some people become quickly inured to that reality. Thomas did not; he decided instead to spend his career working to change it. He has spent his time at Penn working to develop the expertise necessary to do so: pro bono work with the Civil Rights Law Project and the Democracy Law Project, research on bail law for me, summer jobs with Philadelphia Lawyers for Social Equity and then with the Special Litigation Unit of Manhattan Legal Aid's Criminal Defense arm, the Civil Practice and the ARC Justice Clinics, doctrinal coursework in anti-discrimination, constitutional law, and civil rights litigation procedure. This intensive curriculum in public interest lawyering has given Thomas a hands-on education in legal process. He has a much better grasp of litigation dynamics than most graduating students, which I think will provide a very useful foundation for a clerkship.

Thomas also has the intellect and skill to produce written work of the highest caliber. As his transcript demonstrates, he has excelled in his law school career. I have been a beneficiary of his talent. In both classes in which I taught him, he was a reliably excellent participant, always ready to push the class (and me) to rethink aspects of the law or legal practice we had taken for granted, to consider the real-world effects of law and policy (particularly on marginalized groups), and to entertain novel legal arguments. His paper for the criminal justice reform seminar—on how the Supreme Court's high-profile Second Amendment decision, *Bruen*, might inform a legal strategy to reduce Terry stops in New York City—was fascinating, persuasive, and elegantly written. Thomas is a great writer in general. The combination of his talent and his drive will make him an extremely effective judicial clerk.

What makes Thomas even more unique than his legal acumen or commitment to public interest, though, is his genuine empathy. In a law school setting this makes him a cherished classmate and a wonderful student. He is a just a lovely presence, always interested and engaged but never eager for the limelight. I am speculating, but I imagine that Thomas' empathy is partly a function of the vehicle accident in high school that left him with permanent damage to and reduced use of his left hand. Thomas underwent seven surgeries and extensive physical therapy after the accident. The years of treatment were a substantial financial burden for his family, and he is keenly aware of how crushing a traumatic event like that can be to those without resources. As someone with a visible disability, he also, I think, viscerally understands the experience of being in a category that some people see as "other." Whatever its sources, Thomas' empathy will make him an outstanding lawyer and colleague as well as the tremendous human being that he already is.

It is my practice to solicit a few comments from friends of the students for whom I write clerkship letters. In this case one of Thomas' best friends, Cameron, described Thomas as "my only friend who discusses the best new pizza place in NYC as passionately as he does current events." Cameron admires Thomas' "strong moral compass and how he follows it in everything he does." Another old friend, Alex, values Thomas' "passion, friendship, and banter," and admires his "ability to advocate for his beliefs, while updating them when appropriate." I will add, on a personal note, that Thomas is among the graduating students with whom I am most eager to stay in touch.

In sum, Thomas' analytical and writing skill, along with his commitment to the pursuit of justice and his character, will make him both an extremely effective law clerk and a pleasure to have in chambers. I hope that you will take the opportunity to speak with him yourself. Please do not hesitate to contact me if you have any questions at all.

Sandra Mayson - sgmayson@law.upenn.edu

Very truly yours,

Sandra G. Mayson
sgmayson@law.upenn.edu
215-898-6625

Sandra Mayson - sgmayson@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

May 11, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Applicant Thomas Munson

Dear Judge Matsumoto:

It is with great pleasure and enthusiasm that I write to recommend Thomas Munson for a clerkship in your chambers. Mr. Munson's intellect, creativity, work ethic, and commitment to a career serving the public interest all promise to make him an excellent law clerk.

Mr. Munson graduated from Penn in 2018 with a degree in Economics, having confirmed his interest in attending law school when he completed a summer internship at the Federal Trade Commission during college. After graduation, he took a job as a paralegal at the Manhattan district attorney's office, which sparked his interest in becoming a civil rights attorney.

Since matriculating in the law school, Mr. Munson has pursued every opportunity to hone his skills to that end, enrolling and excelling in courses such as Constitutional Litigation, Administrative Law, and Evidence. I first came to know Mr. Munson when he enrolled in my Employment Discrimination course in the Fall of 2021. It was our first semester back in person after more than a year of remote and hybrid learning, and it was wonderful to have students like Thomas whose motivation and engagement were contagious. From the first day of class, Mr. Munson was an active, thoughtful, and eloquent participant in our discussions, matching an intuitive grasp of the material with hard work and impeccable preparation.

Grades in the course were based primarily on an 8-hour takeaway exam. The first part of the exam consisted of two issue-spotters that required students to identify potential legal claims, apply the law to an intricate fact pattern, and make compliance recommendations to a hypothetical employer or strategize on behalf of a potential plaintiff. The second part was a more open-ended essay question that asked students to make descriptive and normative judgments about the field of employment discrimination law. Mr. Munson's answers were clearly written and organized, and demonstrated his command of both doctrinal details and broader policy questions. Together with his excellent class participation, his exam earned Thomas one of only a handful of As in the course.

I was delighted when Mr. Munson enrolled in a new seminar I taught in Fall 2022, entitled *Dobbs v. Jackson Women's Health Organization* in Legal and Historical Perspective. The course was demanding, requiring 100-150 pages of reading each week, weekly writing assignments, and a substantial final research paper. In a class full of outstanding students, Mr. Munson stood out for his insights, engagement, and knowledge about the law and politics of reproductive rights and many other subjects.

Mr. Munson's final paper showcased his prodigious research and writing abilities, as well as his ability to think creatively about legal questions to a degree rare in a law student. His paper elaborated the threats that future federal action might pose to medication abortion access, and outlined two approaches states could take to counter federal anti-abortion enforcement, each modeled on previous state efforts to resist hostile federal policies—regarding medical marijuana and immigration, respectively. His paper was innovative and provocative in the best ways; it was also elegantly written, thoroughly researched, and persuasive. Again, Mr. Munson earned an A in the course. He has matched his excellent work in my classes with a very strong performance in other demanding courses; after taking some time to acclimate to law school exams in his first semester, he has compiled a transcript full of mostly As in subsequent terms.

In addition to his impressive academic record, Mr. Munson has also gained valuable hands-on experience through externships and clinics. He applied his knowledge of employment discrimination law in the Civil Practice Clinic, where he worked with a client to draft an EEOC charge and eventually a federal complaint. He was selected to participate in the inaugural year of a new clinic—the Advocacy for Racial and Civil Justice Clinic—led by Professor Cara McClellan. There, he continued his employment discrimination work and helped to develop investigations of housing and discriminatory policing in Philadelphia, cementing his determination to pursue a career in civil rights. Mr. Munson earned a Toll Public Interest Fellowship for his final two years of law school, a selective scholarship that recognizes students' leadership abilities and demonstrated commitment to a career in public interest law.

Mr. Munson's co-curricular activities have prepared him well for a career in civil rights litigation and for the work of a judicial clerkship. He has served as a research assistant to Professor Sandra Mayson, a scholar of criminal law. His pro bono work with the Civil Rights Law Project and the Democracy Law Project included reviewing Brady claims for the Pennsylvania Innocence Project and helping to write a memo on gerrymandering for the Public Interest Law Center. The summer after his 1L year, Mr. Munson interned with the Philadelphia Lawyers for Social Equity, where he worked directly with individuals applying for criminal record expungements and pardons in Pennsylvania. There, he drafted expungement petitions and worked with formerly incarcerated people to help craft their pardon applications and to mitigate collateral consequences. He also tackled longer legal

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

research assignments related to state constitutional law and criminal records.

Finally, Thomas is an absolute pleasure to be around. He wears his accomplishments lightly, has a wonderful sense of humor, and is kind, thoughtful, and professional. I expect that he would be a delight to have in chambers and would work beautifully with co-clerks and staff. In short, Thomas Munson's application for a judicial clerkship has my strong and enthusiastic endorsement.

Thank you very much for your consideration. I would be delighted to speak with you about Thomas's application should that prove helpful at any point, and hope you will not hesitate to contact me if there is any information or assistance I can provide.

Sincerely,

Serena Mayeri
Professor of Law and History
Tel.: (215) 898-6728
E-mail: smayeri@law.upenn.edu

Serena Mayeri - smayeri@law.upenn.edu - 215-898-6728

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

May 11, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Applicant Thomas Munson

Dear Judge Matsumoto:

I am Practice Associate Professor of Law and Director of the Advocacy for Racial and Civil (“ARC”) Justice Clinic at the University of Pennsylvania Carey Law School. Previously, I served as a staff attorney at the NAACP Legal Defense and Educational Fund, and prior to that I spent two years as a federal law clerk at the district and appellate level. I have had the opportunity to supervise Thomas for two semesters and his performance was at the top of the class each time. Thomas made valuable contributions in seminar discussions and demonstrated leadership in all of his casework. He will make an excellent law clerk and has my strong support.

During the fall semester of the 2022-2023 school year, I supervised Thomas when I co-taught the Civil Practice Clinic with Professor Louis Rulli. Thomas and his teammate were responsible for managing a docket of cases, each of which was unique and challenging in different ways. One case involved a complex legal question, the second involved conducting a factual investigation from scratch, and a third case involved difficult client dynamics and intense emotional trauma. Thomas demonstrated maturity in his approach to each case. He conducted detailed legal research and flagged where he thought the law was unclear and could pose a challenge. He navigated client relationships with consciousness and care. Thomas has keen instincts and exercises good judgment. He does not need handholding, but also knows when to check in because support or supervision is needed.

Thomas is also a passionate advocate who is driven by a deep care for his clients. Thomas understands how to manage client expectations, while also building trusting relationships where his clients feel supported. This is sometimes a tricky balance, but Thomas’s execution is superb. In one case, Thomas and his partner took the lead in investigating and filing a charge of discrimination with the Equal Employment Opportunity Commission. I knew that Thomas and his client had developed a strong relationship because his client told me so, unprompted. Because Thomas was so committed to the case and to the client, he applied to the ARC Justice Clinic for the spring so that he could see the case through. Since then, he has drafted a complaint to file litigation in federal court on behalf of his client. The process of advancing from a charge of discrimination to federal litigation is often long and drawn out, but Thomas’s diligence has continued to push the case forward.

In the ARC Justice Clinic, I have also seen Thomas hone his skills as an advocate. As part of the ARC Justice Clinic, we do two simulated activities: a client interview and an oral argument held by a retired district court judge. Thomas’s talent was evident in each. During the client interview, students have to navigate a sensitive case that involves allegations of discrimination based on a client’s past criminal convictions. Thomas expertly led this conversation with his client in a manner that was respectful, but that also elicited the relevant information to develop a claim of discrimination on behalf of the client. Despite the challenging nature of the conversation, Thomas conveyed empathy and made the client feel genuinely understood. During his oral argument, Thomas’s skill and preparation was again clear. He zeroed in on the critical issues in his constitutional argument, presented his case with confidence, and demonstrated a knowledge of the factual record during questioning that impressed everyone.

Throughout the year, I have seen Thomas act as both a leader and team player. He works collaboratively with partners and effectively shares work and responsibility. Even when he has had partners with challenging schedules, he has worked with his fieldwork teams to plan in advance to accommodate other commitments, and he has navigated teamwork in a positive manner that has never required intervention. This semester, Thomas is on a team of three students, which can be its own challenge. Thomas has helped to keep the team organized and focused. Although their projects involved long-term investigations of systemic injustice caused by complicated laws, Thomas has repeatedly taken the lead in breaking large projects into manageable deliverables. As a result of his leadership, the clinic will be releasing a groundbreaking report later this year.

Throughout his clinic work, Thomas has demonstrated a nuanced understanding of legal questions and attention to complicated factual details. He does not bring an ego to the work—he is committed to the client and is flexible and creative in identifying an effective advocacy strategy based on the particular needs of the case. I am sure Thomas will bring the same care and work ethic as a federal law clerk. Thomas’s background working on criminal justice reform and his experience with civil litigation as a fellow with the New York Civil Liberties Union will enable him to be a real asset in chambers. He is well prepared to begin what I am sure will be a successful career. Should you require any additional information, I can be reached at Caralm@law.upenn.edu or 215-746-2164. Thank you very much for your consideration.

Sincerely,

Cara McClellan

Cara McClellan - caralm@law.upenn.edu - 215-746-2164

Practice Associate Professor of Law
Director, Advocacy for Racial and Civil Justice Clinic
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New York, NY 10010

Thomas Munson

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Writing Sample

Attached is a memo I wrote as an intern with the Legal Aid Society's Special Litigation Unit during the summer of 2022. For this assignment, I was asked to research the deliberative process privilege as it relates to documents that the New York City Police Department sought to withhold from discovery as part of ongoing litigation. This writing sample is entirely my own work and I received no edits from supervisors or colleagues. I have included the complete discussion section, as well as the question presented, and I have lightly edited the memo for clarity. I received permission from my former supervisor to share this memo as a writing sample.

3 Peter Cooper Rd. Apt. 14B
New York, NY 10010

Thomas Munson

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MEMORANDUM

TO: Corey Stoughton, Attorney-in-Charge, LAS Law Reform and Special Litigation
FROM: Thomas Munson, Legal Intern, LAS Law Reform and Special Litigation
DATE: 6/1/2022
RE: Deliberative Process Privilege

Question Presented

Does the deliberative process privilege cover any documents (or portions of documents) which reflect the NYPD's decision to abandon an internal after-action report reviewing the department's responses to mass protests in the summer of 2020?

Discussion

In federal litigation, courts apply federal common law privilege rules, including the deliberative process privilege. *Rodriguez v. Pataki*, 280 F.Supp.2d 89, 94 (S.D.N.Y. 2003).¹ Deliberative process privilege protects inter-agency and intra-agency documents only when they are 'predecisional' and deliberate. *Tigue v. U.S. Dept. of Justice*, 312 F.3d 70, 76 (2d Cir. 2002). Documents are 'predecisional' when they are "prepared in order to assist an agency decisionmaker in arriving at his decision." *Id.* (quoting *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999)). Documents are deliberative when they are "actually . . . related to the process by which policies are formulated." *Cuomo*, 166 F.3d at 482 (quoting *Hopkins v. U.S. Dep't of Hous. & Urb. Dev.*, 929 F.2d 81, 84 (2d Cir. 1991)). Simply satisfying these criteria is not enough for the government to withhold documents in litigation. Deliberative process privilege is also a qualified privilege which is subject to a five-factor balancing test. *Noel v. City of New York*, 357 F. Supp. 3d 298, 303 (S.D.N.Y. 2019).

¹ Because the deliberative process privilege is similarly invoked both to limit discovery in federal litigation and to deny Freedom of Information Act requests, courts in the Second Circuit (and elsewhere) rely on FOIA and non-FOIA authority in applying the deliberative process privilege. *MacNamara v. City of New York*, 249 F.R.D. 70, 77 n.6 (S.D.N.Y. 2008).

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New York, NY 10010

Thomas Munson

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Documents memorializing the decision to abandon the draft after-action review report on NYPD responses to protests in the summer of 2020 can be properly identified as discoverable final decisions not entitled to deliberative process privilege. Additionally, the balancing test used to qualify the privilege likely weighs in favor of disclosure of all related documents and communications, even if the sought-after documents are categorized as predecisional. This is especially true if the decision-making process to create and abandon the report is the subject of litigation, in which case the city may be barred from invoking the privilege for any related documents. *See Mitchell v. Fishbein*, 227 F.R.D. 239, 250 (S.D.N.Y. 2005); *Noel*, 357 F. Supp at 303 n.2. Alternatively, the decision to abandon the report and other related communications could be categorized as routine operating decisions which are not subject to the privilege at all. *Tigue*, 312 F.3d at 80. Which of these arguments is the strongest and most appropriate response to the City's privilege claims will rest on whether the decision to abandon the report is categorized as a policy decision or a routine operating decision.

I. Decisions to not Pursue Government Action are Final Decisions and are not Entitled to Deliberative Process Privilege.

Documents memorializing the decision to abandon the after-action report are not predecisional and therefore are not covered by deliberative process privilege. When executive decisionmakers affirmatively choose to not pursue a course of action, their choices reflect final decisions. *See N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 148 (1975). *See generally* *Wood v. F.B.I.*, 432 F.3d 78, 83-84 (2d Cir. 2005); *MacNamara v. City of N.Y.*, 249 F.R.D. 70, 82 (S.D.N.Y. 2008). To determine if a document represents a final decision, the ultimate question “is not whether a document is last in line, but whether it communicates a policy on which the agency has settled.” *U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 786 (2021).

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Additionally, documents that would have been categorized as predecisional at the time of preparation can lose that status when they are “adopted, formally or informally, as the agency position on an issue.” *Nat’l Council of La Raza v. Dep’t of Just.*, 411 F.3d 350, 356-57 (2d Cir. 2005) (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)). Because the decision to abandon the report was the NYPD’s final position on the issue of whether to publish the report, documents reflecting this decision could be categorized as final decisions with regards to deliberative process privilege. Furthermore, any communications adopted by this decision would also not be covered by the privilege.

In *Sears*, the Court held that memoranda explaining decisions by the General Council of the N.L.R.B. to not file unfair labor practice complaints were final decisions. *Sears*, 421 U.S. 148. The Court made this determination because the decision to not file a complaint has the effect of a final disposition in potential labor adjudications, and therefore disclosure of these memoranda “would not intrude on predecisional processes.” *Id.* at 155. Similarly, in *Wood*, the Second Circuit acknowledged that a Department of Justice decision to not initiate a prosecution was a final decision. (This holding is implied by the court’s discussion of whether memoranda related to the potential prosecution were adopted by the Department of Justice in its final decision not to prosecute). *Wood*, 432 F.3d at 81-85. In *MacNamara*, the district court also indirectly addressed this issue in the court’s discussion of memoranda detailing a summary of preliminary mass arrest processing plans by the NYPD ahead of the 2004 Republican National Convention. *MacNamara*, 249 F.R.D. at 82. There, the court held that the aforementioned memorandum was predecisional because its authors prepared it prior to a final decision which did not adopt the plan proposed in the memorandum. *Id.* Therefore, unlike documents memorializing proposed decisions which “died on the vine” (*Sec. & Exch. Comm’n v. Ripple Labs, Inc.*, No. 20CV10832ATSN, 2022 WL

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123590 (S.D.N.Y. Jan. 13, 2022)), documents which reflect an affirmative decision to not take an action are final decisions not entitled to privilege.

Predecisional memorandum lose deliberative process privilege when they are incorporated into the final opinion of an agency. *Sears*, 421 U.S. at 161. Once adopted, these documents are no longer privileged because “the reasoning becomes that of the agency.” *Id.* The Second Circuit requires such disclosure of predecisional memorandum when an agency “expressly adopt[s] or incorporate[s] by reference” such memorandum. *Wood*, 432 F.3d at 83. To compel disclosure, a final decision must adopt both the predecisional document’s conclusions and reasoning. Adoption is supported by repeated reference to the predecisional memorandum within the final decision. *Id.* at 84.

Documentation of the decision to abandon the after-action report could reflect a final decision requiring disclosure. Additionally, communications that identify the reasoning to abandon the report which the department adopted in their final decision should not be covered by the deliberative process privilege. Admittedly, the decision to not publish a report is not as significant as a decision to not file a complaint or to not press criminal charges, nor does it perfectly mirror the policy decision made in *MacNamara*. However, a decision to not take an action or to decline a policy proposal is still a final decision. Therefore, if a decision to publish the report would be a policy formulation, then a decision to abandon the report must also be categorized as a final decision exempt from the privilege.

II. The Deliberative Process Privilege is Qualified, and Even Deliberative Predecisional Documents Must Surpass a Balancing Test to Invoke the Privilege.

The deliberative process privilege is a qualified privilege. Therefore, documents which are classified as both predecisional and deliberate must also pass a balancing test. *Noel*, 357 F. Supp

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at 303. When administering this balancing test, the party invoking the privilege holds the burden of persuasion. *MacNamara*, 249 F.R.D. at 80. The balancing factors are:

“(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the ‘seriousness’ of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.”

Noel, 357 F. Supp at 303. Some courts have further held that the privilege does not apply where the decision-making process is itself the subject of the litigation and that disclosure of critical information is compelled by that factor alone. *See Mitchell*, 227 F.R.D. at 250; *Noel*, 357 F. Supp. 3d at 303 n.2. Additionally, the court in *MacNamara* emphasized that in civil rights cases government defendants’ privilege claims “must be extremely persuasive.” *MacNamara*, 249 F.R.D. at 80 (citing *King v. Conde*, 121 F.R.D. 180, 195 (E.D.N.Y. 1988)). Another factor cited by the court in favor of disclosure is that “[g]enerally, in civil rights cases against police departments, it is unlikely that plaintiffs will be able to obtain information of comparable quality from any other source.” *Nat’l Cong. For Puerto Rican Rts. ex rel. Perez v. City of New York*, 194 F.R.D. 88, 96 (S.D.N.Y. 2000). Furthermore, there are strong public interests in uncovering civil rights violations by the NYPD which further weigh in favor of requiring disclosure. *Id.*

The balancing analysis applied in *MacNamara* indicates that a similar analysis should require disclosure of documents related to the decision to abandon the after-action report. In *MacNamara*, the court held that a memorandum detailing a proposal for mass arrest processing during the 2004 Republican National Convention (“RNC”) fell within the deliberative process privilege, but nonetheless required disclosure after administering the corresponding balancing test. *Id.* at 82. Facts tipping the court in favor of disclosure were: that the intent and knowledge of the NYPD officials involved in these mass arrest decisions were central to the plaintiffs’ claims; that the information in the memorandum could only be obtained from the defendants; and that

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disclosure would not pose a substantial risk of chilling NYPD employees' candor due to protective orders and the NYPD's "strong incentive . . . to fulfill their professional obligations to relay to their supervisors recommendations regarding operational policies." *Id.* at 82-83.

While a court might ultimately find that the decision to abandon the report is covered by the deliberative process privilege, the balancing test should still favor disclosure of any related predecisional documents. Like in *MacNamara* and *Perez*, the 2020 protest litigation concerns civil rights cases against the NYPD. These factors increase the threshold the City must meet to succeed on its privilege claim. Additionally, the central role of NYPD decision-making processes in this litigation further provides a strong basis to deny any privilege claims by the City in regards to the decision to abandon the after-action review process.

III. Routine Operating Decisions that Do Not Reflect Policy Formulations are not Entitled to the Deliberative Process Privilege.

The decision to abandon the report, as well as the commission and drafting of the report itself, may be better categorized as routine operating decisions, rather than the types of policy decisions protected by the deliberative process privilege. The privilege only covers "policy formulation at the higher levels of government" and does not shield "routine operating decisions." *Mitchell*, 227 F.R.D. at 251. Additionally, the privilege does not cover documents which are 'peripheral' to policy formulations or that are "merely part of a routine and ongoing process of agency self-evaluation." *Tigue*, 312 F.3d at 80.

Routine operating decisions encompass a wide range of agency and executive actions. In a civil rights lawsuit regarding discrimination in New York's certification of 18-B attorneys, the court held that decisions regarding "whether to certify or decertify an attorney are best categorized as 'routine' . . . and thus cannot qualify for the deliberative process privilege." *Mitchell*, 227 F.R.D.

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at 251. In *MacNamara*, the court held that the deliberative process privilege did not apply to NYPD e-mails concerning “routine operating decisions” such as: talking points for a meeting between the Mayor and Police Commissioner prior to the RNC; discussion of an NYPD drill; and details regarding a “Post-Arrest Staging Site during the RNC.” *MacNamara*, 249 F.R.D. at 85. These e-mails, according to the court, were not the types of “policy oriented judgments” to which the privilege applies. *Id.* In separate litigation against the City over unconstitutional practices by the NYPD’s Street Crime Unit (“SCU”), the court again held that internal police communications did not meet the policy threshold necessary to invoke the deliberative process privilege. *Perez*, 194 F.R.D. at 93. There, the court held that memorandum sent by and to the commanding officer of a patrol borough regarding proposals for the relocation and expansion of the SCU “is not the type of policy-oriented decision protected by the deliberative process privilege.” *Id.* But see *Hopkins*, 929 F.2d at 84-86 (holding that HUD inspector reports containing the professional opinions of employees on the progress and quality of construction work are covered by the deliberative process privilege because the employees lack the authority to make final agency decisions and these recommendations enable HUD to manage its projects and negotiate contracts).

The NYPD’s entire deliberation process with regards to the abandoning of the after-action review report could be categorized as internal processes that are part of routine operating decisions and thus not covered by the deliberative process privilege. The after-action review could be identified as part of the NYPD’s self-evaluation process within routine operating decisions. Additionally, this process has similar characteristics to agency decisions that prior S.D.N.Y. cases have categorized as routine. The after-action report reviewed police responses to ongoing and completed protests. The reflective elements of the report may indicate that the decision to abandon the report is less related to high level policy decisions and is more indicative of ‘peripheral’

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decisions. Like individual decisions over where to locate an SCU or whether to certify an 18-B attorney, the decision to abandon an after-action report is a single decision and not necessarily reflective of the NYPD adopting or rejecting a policy. Even in *MacNamara*, e-mails discussing planned responses to mass protests were categorized as routine.

However, the report may also have included suggestions for how to amend certain protest response policies. If the decisionmaker abandoned the report based on a rejection of these suggestions then the decision to abandon the report should fall within the definition of a ‘final decision’ discussed previously and thus may still be subject to disclosure. If, however, the decision to abandon the report reflected a rejection of the report’s conclusions about the protest response or for other non-policy related reasons, then the decision is better categorized as a routine operating decision and similarly could be disclosed. An in-camera review by the presiding judge of the documents relating to the decision to abandon the report could confirm which of these classifications is most appropriate.

Conclusion

Documents reflecting the NYPD’s decision to abandon an internal after-action review report reviewing the department’s responses to mass protests in the summer of 2020 should not be covered by the deliberative process privilege. Deliberative process privilege only covers intra and inter-agency documents that are both predecisional and deliberative. If the decision to abandon the report reflected a rejection of policy suggestions within the report, then abandoning the report is a final decision and is thus not entitled to the privilege. If rather the decision was in response to the report’s findings about the NYPD’s protest response, or other reasoning unrelated to policy formulation, then abandoning the report reflects the routine operating decisions of the NYPD and is also not entitled to the privilege. Ultimately, this distinction, as well as the underlying specifics

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of the litigation, will determine which related documents could be covered by the deliberative process privilege. If abandoning the report is a final decision, then predecisional documents whose reasonings are ‘adopted’ by the decision must be disclosed. The privilege of other predecisional communications will be determined by a balancing test in which the City will carry the burden of showing that the balancing factors favor non-disclosure.

Applicant Details

First Name **Justin**
 Last Name **Nam**
 Citizenship Status **U. S. Citizen**
 Email Address junam@pennlaw.upenn.edu
 Address

Address**Street****2620 Webster St, A****City****Philadelphia****State/Territory****Pennsylvania****Zip****19146****Country****United States**

Contact Phone Number **7036264682**

Applicant Education

BA/BS From **Vassar College**
 Date of BA/BS **May 2016**
 JD/LLB From **University of Pennsylvania Carey Law School**
<https://www.law.upenn.edu/careers/>
 Date of JD/LLB **May 15, 2023**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **University of Pennsylvania Journal of International Law**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Ferzan, Kimberly
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Williams, Travis
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Shanor, Amanda
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

JUSTIN NAM

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June 12, 2023

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Matsumoto,

I am writing to request your consideration of my application for clerkship positions beginning in October 2025. I am a rising third-year student at the University of Pennsylvania Law School. Having lived in the state during college and worked in law firms in New York City during my summer breaks, I am interested in clerking in the Eastern District of New York and learning about litigation in the city.

Prior to law school, I was an armor officer in the Army. As a Staff Officer, I prepared daily written reports and oral briefings on the disposition of our forces in the Middle East to my higher commanders. Upon return from my deployment, I was hand-picked to serve as my Brigade Commander's aide. I was trusted to draft my commander's speeches, official correspondence and memorandums and further developed my written and oral communication skills. I particularly enjoyed my work as an investigating officer for cases involving soldier misconduct, maintenance issues and property damage. In this capacity, I researched Army regulations, conducted interviews, issued sworn statements, assembled exhibits and wrote memorandums of factual findings and policy recommendations to enable my commanders to make informed decisions. I found this process of assembling factual records and advocating for policy outcomes to be a rewarding experience. Accordingly, I will be working at a small litigation firm this summer and hope to become a trial lawyer. I hope to further develop my advocacy skills through a clerkship in your chambers. I do not have a traditional law student background or family members that are lawyers and understand that a clerkship in your chambers is an unparalleled opportunity to immerse myself in litigation.

I enclose my resume, transcript and writing sample. I have also included letters of recommendation from Professor Kimberly Ferzan (kferzan@law.upenn.edu), Professor Amanda Shanor (shanor@law.upenn.edu) and former Army Captain Travis Williams (travis.williams410@gmail.com). Please let me know if you would like any additional information. Thank you for your time and consideration.

Respectfully,

Justin Nam

Justin Nam

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EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA

JD Candidate, May 2024

Honors: Articles Editor, *Journal of International Law*
 Activities: Co-President, Penn Law Boxing Club
 Asian Pacific American Law Students Association
 Penn Law Veterans Association

Vassar College, Poughkeepsie, NY

B.A., International Studies, May 2016

Activities: Vassar Rugby (7's Captain)
 Thesis: Ba'athism Corrupted? Producing Modernity in Assad's Syria

EXPERIENCE

Selendy Gay Elsberg, New York City, New York

May 2023 – Present

Incoming Summer Associate

Skadden Arps, New York City, New York

May 2022 – July 2022

Summer Associate

Drafted research memorandums for litigation and international arbitration matters. Researched legal issues including arbitration panel composition, post-judgment motions, and litigation finance.

ID.me, McLean, VA

February 2021 – August 2021

Assistant Team Lead/Instructor

Verified customer identities to confirm eligibility for government assistance programs. Mentored high-performing representatives to serve as team leads. Developed on-boarding training regimen.

US Army, Ft. Bliss, TX; Kuwait; South Korea

April 2018 – October 2019

Aide to Brigade Commander, Operations Officer

Served as aide to the commander of a 4,500-person military organization. Drafted official correspondence, memorandums, and speeches for brigade leadership. Coordinated life support and logistics with Polish and South Korean Army counterparts to conduct rapid deployments. Conducted sensitive investigations into loss of property and improper conduct across the organization. Chaired daily staff meetings for operations in Middle East.

US Army, Ft. Bliss, TX; Kuwait; Saudi Arabia

May 2017 – March 2018

Tank Platoon Leader

Led training and maintenance for team of 16 soldiers and 4 tanks. Managed \$24 million dollars of equipment. Coordinated with civilian and military authorities across three countries for the movement of over 200 personnel and \$100 million of equipment. Advised Saudi Arabian forces as an embedded liaison officer to conduct joint training missions.

LANGUAGES & INTERESTS

Fluent in Korean. Intermediate proficiency in Arabic. Rugby, boxing, camping, surfing, traveling.

JUSTIN NAM
UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Professional Responsibility	Abraham Reich	A	2.00	
Blockchain and the Law	Andrea Tosato	A	3.00	
Trademarks	Jennifer Rothman	A-	3.00	
Intermediate Arabic	Kaley Keener	Pass	3.00	Pass/Fail Class
Just Transition and Lawyering	Amy Cahn	In Progress	3.00	Grade Not Submitted

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporations	David Skeel	B+	4.00	
Evidence	Kimberly Ferzan	B+	4.00	
Anatomy of a Divorce	Robert Cohen	A-	2.00	
Trial Advocacy	Gene Pratter	Pass	2.00	Pass/Fail Class
Intermediate Arabic	Amel Mili	Pass	3.00	Pass/Fail Class

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Amanda Shanor	A-	4.00	
Criminal Law	Kimberly Ferzan	A-	4.00	
Judicial Decision-Making	Anthony Scirica	A-	3.00	
International Law	William Burke-White	A	3.00	
Legal Practice Skills Cohort	Zachary Willis	Pass	0.00	Pass/Fail Class
Legal Practice Skills	Chelsea Edwards	Pass	2.00	Pass/Fail Class

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Tobias Wolff	B+	4.0	
Contracts	Jean Galbraith	A	4.0	
Torts	Jonathan Klick	B	4.0	
Legal Practice Skills Cohort	Zachary Willis	Pass	4.0	Pass/Fail Class
Legal Practice Skills	Chelsea Edwards	Pass	0.00	Pass/Fail Class

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 12, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Applicant Justin Nam

Dear Judge Matsumoto:

Justin Nam is one of the most interesting students for whom I have ever written a clerkship letter. His sense of duty and his natural curiosity led him to enlist in the army, wherein he was a tank commander responsible for the lives of others. His role in the military stood in stark contrast to his peers in college; he was hardly the average Vassar student. His willingness to follow his curiosity was what made him such an enjoyable student and what will surely make him a terrific law clerk and eventually a wildly successful lawyer.

Justin was a very strong student. He earned an A- in Criminal Law and a B+ in Evidence. He was consistently prepared and engaged, and his exam performances were strong. He was about a half a standard deviation above the mean in Criminal Law and around the mean in Evidence. Given the extraordinary talent of the Penn Carey Law class as a whole, I am fully confident in Justin's legal abilities, both in terms of analytical thinking and writing clearly and consistently under time pressure.

The payoff in working with Justin is not merely his strong intellectual abilities but also working with someone with a different viewpoint of the world. None of his family members are lawyers, but he is comfortable putting himself in unfamiliar places and learning. Indeed, he seems to thrive in adapting to the unfamiliar. Moreover, he truly is a lawyer at heart. While working in the army, he volunteered to be the investigating officer for claims of misconduct, and it was in this role that he found his footing. He loved not just the factual questions but also thinking, as a policy matter, about what should happen going forward. Justin saw the power of rules in shaping behavior.

Justin will be a joy to have in chambers. There is no law student in the building whom I enjoy stopping and chatting with in the halls more than Justin. He has an adaptability and an ease with people that will make him an ideal law clerk. I greatly admire Justin, and I believe he will be a true asset to your chambers. I recommend him wholeheartedly.

Sincerely,

Kimberly Kessler Ferzan
Earle Hepburn Professor of Law
kferzan@law.upenn.edu
215-573-6492

Kimberly Ferzan - kferzan@law.upenn.edu - 215-573-6492

To Whom it May Concern,

I would like to formally recommend Justin Nam for consideration as a clerk in your chambers. I have known Justin for over six years now and had the privilege of serving as his Commander for over a year during our unit's deployment to the Middle East. During his time as a Tank Platoon Leader, he showed a high level of competence when dealing with complex issues such as the maintenance of his four tanks, planning collective training events and conducting investigations. He has demonstrated on numerous occasions the ability to foresee issues and articulate their effects in a clear and concise manner. This benefited the lives and well-being of over 100 Soldiers and was rewarded when Justin was selected to be the Aide-de-camp of the Brigade Commander.

Justin's selection was not only due to his intellectual abilities and communication skills. Justin shows great care for those in his charge and even for those who are not – a quality that sets him apart from many of his peers. His compassion and companionship were well known in an organization of over 5,000 soldiers. I never entered a room in which Justin was not warmly greeted by someone or met a person who did not have a nice thing to say about him. Justin is charismatic and incredibly shrewd; qualities he uses to help advance others.

I believe Justin to be an excellent candidate for a clerkship, and he processes all the values The University of Pennsylvania holds dear: compassion, accessibility, respect, and empowerment. He demonstrates those daily. He also has numerous other qualities, including a great sense of humor, that I think you would value as well and he would be a great alumnus and steward of your chambers. Through my experiences as his supervisor and personally witnessing his leadership and adaptability, I know he has the capacity to excel in any task he is given. I routinely assigned Justin the most difficult tasks because I knew I could count on him to deliver outstanding results.

It is my greatest hope that you grant Justin Nam the privilege of being accepted into your chambers so that he may continue to help and serve others. He is a great American and more importantly an amazing human who has great intellectual ability and wishes to use it to help others.

Respectfully,

Travis Williams, MS, SHRM-SCP
904-451-1211
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UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 12, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Applicant Justin Nam

Dear Judge Matsumoto:

I am writing to enthusiastically support Justin Nam's clerkship application.

I had the pleasure of teaching Justin in my Constitutional Law class at the University of Pennsylvania Carey Law School in the spring of his 1L year. The course Justin took with me is a critical introduction to the fundamental concepts and institutions of American constitutional law. In one semester, it covers both structure and rights—and so ranges from separation of powers, federalism, and the role of the courts in the interpretation and enforcement of the Constitution to equal protection and due process. The course aims to convey to students the dynamism and larger arc of American constitutional law, including its history, context, and paths not taken.

It was a joy to teach Justin. He was consistently an insightful class participant and always prepared. Justin wrote a strong final exam in clear and concise prose in which he identified and ably analyzed a range of complex issues. Justin wrote his final essay on the use of history as a tool of constitutional interpretation, which he traced through various periods, including in cases involving settler-colonialism, school desegregation, the internment of Japanese Americans, and the War on Terror. He argued that "a recognition of alternative narratives" should be deployed as a reparatory tool and that "it is up to each generation to decide whose history to listen to and what do with it."

Outside of class, I learned more about Justin. He is an Army veteran, immigrant, and Korean American. Before law school, Justin was a Tank Platoon Leader and then an Operations Officer. He used his Arabic and Korean language skills to serve in several high-profile liaison positions to host-nation forces in Kuwait, Saudi Arabia, and South Korea. Justin credits that opportunity to the sort of cross-cultural fluency that he built being an outsider in many contexts. He is the only member of his family that lives in the United States. He was an Asian tank officer in a predominantly white officer corps. He attended a historic women's college and became the first officer it commissioned in 30 years. His parents live in South Korea, where U.S. military presence is often viewed negatively, while at the same time he was part of that same sort of military presence.

I credit those experiences with developing in Justin the striking ability to speak tactfully and bring together people of disparate backgrounds and viewpoints that I observed in Constitutional Law. Justin is not only smart and able, but thoughtful, kind, funny, and inquisitive.

I know Justin will be a wonderful clerk. I hope you give him that opportunity.

Please do not hesitate to contact me if I can provide additional information, or if I can be of assistance in any other way.

Sincerely,

Amanda Shanor
Shanor@law.upenn.edu
(203) 247-2195

Visiting Professor, The University of Pennsylvania Carey Law School
Assistant Professor, The Wharton School of the University of Pennsylvania
J.D., Yale Law School, Ph.D., Yale University, B.A., Yale College

Amanda Shanor - shanor@law.upenn.edu - 215-898-1729

Justin Nam

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Writing Sample

I drafted this writing sample as an assignment for my legal writing course. The assignment required writing a brief in opposition to a school district's summary judgement motion. The fact pattern involved a school administrator ("Sylvester") searching a student ("Senanayke"), finding evidence that he may have sold e-cigarette products to other students and punishing the student. I excerpted the second part of my brief which argued that the search was unreasonable and violated the Fourth Amendment. I conducted all research and editing necessary for the assignment.

II. THE COURT SHOULD DENY THE MOTION FOR SUMMARY JUDGEMENT BECAUSE A REASONABLE JURY COULD CONCLUDE THAT SYLVESTER'S SUBSEQUENT SEARCHES UNREASONABLE AT THEIR INCEPTION AND IN THEIR SCOPE

The motion for summary judgement must be denied because a jury could conclude that the Second Search either lacked a reasonable justification at inception or exceeded its reasonable scope through its intrusive measures. Searches of students by school officials based on suspicion of violations of school rules are also subject to a similar “reasonableness” requirement of the Fourth Amendment as school search policies. *T.L.O.*, 469 U.S. at 343. In public schools, individual searches may be permitted without a warrant and a “probable cause” level of suspicion if they are reasonable. *Id.* at 340. A reasonable search must satisfy two elements: (1) “the action must be justified at its inception” and (2) “the scope of the search must be reasonably related to the circumstances which justified the interference in the first place.” *Cason v. Cook*, 810 F.2d 188, 191 (8th Cir. 1987).

A. The Search of the Phone Was Not Justified at Inception Because There Was No Reasonable Particularized Indication that Senanayake Had Violated the Law or School Policy.

The search of Senanayake’s phone was not justified at inception because Sylvester operated on mere hunch rather than on reasonable suspicion and took no actions to independently verify her suspicions outside of the context of the search. A search of a student by a school official is justified at its inception only when the school official has a sufficiently reasonable belief that the student has committed an infraction. *T.L.O.*, 469 U.S. at 341. Absent direct evidence to substantiate such a belief, the search is motivated by mere “hunch” and is unjustified. *Id.* at 346. A search that yields evidence of wrongdoing but lacks the requisite level of justification at inception is unconstitutional because the reasonableness of suspicion must be

assessed at the initiation of the search. *Thomas v. Barze*, 57 F. Supp. 3d. 1040, 1071 (D. Minn. 2014).

A school search must be substantiated by a particularized suspicion of a violation of school policy and have a sufficient “nexus” linking the “item searched for and the infraction under investigation.” *T.L.O.*, 469 U.S. at 345. A search is justified at inception when “there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” *Id.* at 342. In *New Jersey v. T.L.O.*, the court held that a principal’s search of a student’s purse was justified because the principal could infer with “sufficient probability” she was violating school rules when a teacher reported that he had found her and a companion smoking in a school restroom. *Id.* at 345-46. The search of the purse was reasonable at inception because the principal was not acting upon a “inchoate and unparticularized suspicion or ‘hunch’” and his suspicions were substantiated by a teacher’s report from which he could draw a “common sense conclusion” that cigarettes were in the student’s purse. *Id.* at 346.

A search is not justified at inception when it is based upon “general background knowledge” of an individual. *G.C. v. Owensboro Pub. Sch.*, 711 F.3d 623, 633-34 (6th Cir. 2013). In *Owensboro*, the court held that the search of student’s cellphone was unreasonable despite both background knowledge of the student’s substance abuse and mental health issues and the fact that the seizure of the phone was justified by a school policy that did not allow students to use their phones during class. *Id.* The court found that school officials needed to have a “specific reason” to search the contents of the confiscated phone. *Id.* at 634. The search failed to be reasonable at its inception because background knowledge by itself did not warrant an

intrusive search of the student's cell phone and a further particularized showing of suspicion of violations of school rules was required to justify the search. *Id.* at 633.

Like the school officials in *Owensboro* that justified their actions with generalized assumptions in an unreasonable search of a student's cell phone, Sylvester used an ambiguous message notification as her justification for conducting an intrusive search through applications that disclosed intimate aspects of Senanayake's personal life in painstaking detail. Drawing inferences in favor Senanayake, a reasonable jury could conclude that the message reading "thanks for the pod" followed by a cloud emoji was sufficiently ambiguous that it would not lead to a reasonable inference to justify the Second Search given that Sylvester had already searched through Senanayake's cell phone and read through Senanayake's "iMessages, Instagram messages, Twitter messages, Snapchat messages, and What's App messages," earlier that day. (Sylvester Dep. 11:14-20). Even if it were reasonable to infer that the message referred to vaping in general, Senanayake was legally entitled to use e-cigarette products at the time of the search. The message did not suggest that Senanayake specifically distributed and used e-cigarette products on school grounds in violation of district policy. Unlike the principal in *T.L.O.* who could conclude with "sufficient probability" that school rules were being broken based on a teacher's report of students smoking in the restroom, Sylvester's search was based on a general "hunch" derived from a Venmo notification and a general suspicion of Senanayake. 469 U.S. at 346. Her hunch, grounded in her perception of Senanayake as a "big, older, cool kid" and an ambiguous message about a perfectly legal activity, does not justify violating Senanayake's constitutional rights.

A jury does not need to accept Sylvester's "now coherent explanation" for searching through Senanayake's cell phone. *Thomas*, F. Supp. 3d. at 1071. Though her search could seem

more reasonable because Senanayake does use e-cigarette products, she should not be afforded the benefit of hindsight for a search that lacked reasonable suspicion of a school infraction at its outset. It is questionable whether Sylvester’s conclusion that Senanayake was violating school policy was substantiated by particularized suspicion. Sylvester seemingly relied on a reactionary interpretation of an ambiguous notification—featuring only a cloud emoticon, and reference to a “pod”—to immediately conclude that Senanayake was distributing e-cigarette pods on school grounds during school hours and conduct a search of a financial services application and read through personal messages. A reasonable jury could conclude that the search was motivated by a hunch and a general suspicion of Senanayake as an older student than any specific information. Taking the facts in the light most favorable to Senanayake, a jury could find that the Venmo notification constituted too attenuated a link to a possible violation of school policy for an invasion of a student’s personal privacy.

B. Sylvester’s Subsequent Searches Through Undisclosed Applications Far Exceeded the Permissible Bounds for the Search Because It Was Categorically Intrusive and Lacked Mitigating Justification.

The second search of Senanayake’s phone exceeded its permissible scope because it was not reasonably related to the objective of unearthing evidence of e-cigarette distribution and consumption. Sylvester lacked the heightened reasonable suspicion needed to search through personal Notes entries, rendering the search excessively intrusive in light of the nature of the infraction. A search is permissible in scope only when the methods are “reasonably related to the objectives of the search,” and not “excessively intrusive in light of the age and sex of the student and the nature of the infraction.” *T.L.O.* at 342. As a search continues, additional justification is required as a search becomes more invasive. *Safford* at 376.

When a search becomes increasingly intrusive, it must be continuously justified through a string of incriminating discoveries to justify its broadening scope. The search should be divided into discrete units that each require additional reasonable justification. *T.L.O.*, 469 U.S. at 347. In *T.L.O.*, the Court held that a principal's increasingly expansive search of a student's purse was reasonable because each new search was justified by new incriminating evidence that suggested violations of school rules. *Id.* at 346-48. *See also Owensboro*, 711 F.3d at 633 (finding that even if the original justification for the search were reasonable, this "[would] not automatically trigger an essentially unlimited right enabling a school official to search any content on the phone that is not related ...to the infraction." The original search of the student's purse was justified by a reasonable suspicion that she had been smoking cigarettes with her friend in the bathroom. *Id.* at 346. The subsequent discovery of rolling papers in the purse justified a more extensive examination of the purse compartments. *Id.* at 347. This ultimately led to the discovery of documents that revealed the student was involved in drug trafficking. *Id.* While the entire search involved a single purse, the increasing scrutiny on the purse constituted a broadening of scope, which in turn necessitated additional specific justification. *Id.*

To remain within reasonable bounds, a search must be tailored to finding evidence of the suspected infraction and refrain from undertaking methods "excessively intrusive under the totality of circumstances." *A.M. v. Holmes*, 830 F.3d 1123, 1160 (10th Cir. 2016). In *A.M. v. Holmes*, the court held that a teacher's search of the outer garments of a student for drugs was reasonable because it was "justifiably intrusive in light of the purpose of the policy being carried out." *Id.* While the court noted "a higher level of justification [was] necessary" to conduct the more intrusive search of the clothing under his jacket and pants, it found that the unique circumstances preceding the interaction like the discovery of potential "gang-related clothing," a

large quantity of cash, and “belt bearing the image of a marijuana leaf” allowed for a more expansive search. *Id.* These incriminating discoveries, coupled with the objective of “detecting small items” in the form of “baggies of marijuana,” rendered the subsequent search involving the removal of the plaintiff’s outerwear as justifiably tailored to uncovering evidence of drug transactions. Furthermore, the teacher maintained the search at a reasonable scope by escalating the search incrementally before the student removed any clothing. *Id.*

A search is unreasonable in scope when it adopts categorically intrusive means that are not narrowly tailored to the objectives of the search. *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 375 (2009). In *Safford Unified School District #1 v. Redding*, the Court held that the strip-search of a student suspected of drug possession was a violation of her Fourth Amendment rights because it exceeded its constitutional scope. *Id.* at 368. While the initial search of the student’s belongings was justified, the Court stated that a search like the strip-search that would violate “both subjective and reasonable societal expectations of personal privacy,” required a proportionately stronger separate justification. *Id.* at 374. The Court classified the strip-search as “categorically extreme [in its] intrusiveness” because of its embarrassing and degrading nature. *Id.* at 374-75. Furthermore, the Court held that the school had a weak rationale for the strip-search because the drugs in question were legal over-the-counter medications, previous searches turned up nothing, and there were no specific facts suggesting that drugs were hidden in the student’s underwear. *Id.* at 375-77. Consequently, the school officials violated the student’s Fourth Amendment rights when they made a “quantum leap” from searching her belongings to forcing her to expose herself absent any mitigating considerations. *Id.* at 377.

Sylvester adopted categorically invasive means to conduct a search without the requisite level of heightened suspicion that could justify her actions as constitutionally reasonable. Like the student in *Redding* who was subjected to a degrading strip-search, Senanayake had both his subjective and reasonable expectations of privacy violated in a humiliating manner. Senanayake's Notes entries included messages to his intimate partner, song lyrics, and personal to-do lists. These notes are more akin to diary entries and merit a characterization as "categorically intrusive" for their potential damaging effects on students' expectations of privacy. Given the nature and breadth of information stored in modern cell phones, a student should also have a reasonable expectation that school officials will not sift through the contents of their phone absent extenuating circumstances. Senanayake's embarrassment from the incident remains so extreme that he has elected to quit a sport he dedicated a significant portion of his life to in order to avoid the possibility of another similar intrusion to his privacy. Moreover, like the student in *Redding* who was subjected to an unconstitutional and categorically invasive search for over-the-counter medications, Senanayake also endured a similarly degrading search for a product from a product he is legally entitled to use. The potential danger from commercial e-cigarette products cannot justify a disproportionately broad search of his personal messages, financial information, and Notes entries. Additionally, just as the invasiveness of the strip search in *Redding* necessitated actual evidence that the plaintiff had pills in her underwear, it is logical to presume that, while not a bodily search, the analogously "extreme" search of a highly private cellphone application would require actual, reasonable evidence of vape-pod transactions within the Notes app. A reasonable jury could conclude, as Sylvester perhaps should have, that evidence of such activity might have been best confined to Venmo, which logs transactions. Just as this

deficiency in justification was “fatal to finding the search reasonable” in *Safford*, it should likewise be fatal here. 557 U.S. at 377.

Here, Sylvester’s examinations of Senanayake’s Venmo and Notes applications represent a “quantum leap” in escalation. Unlike the teacher in *Holmes* who only incrementally increased the invasiveness of her search after finding incriminating evidence, Sylvester did not proportionately escalate her search. Instead, she disregarded Senanayake’s right to privacy by immediately conducting her investigation in the most intrusive manner possible at a time when other reasonable alternatives like questioning Senanayake while returning the phone existed. The nature of the threat from e-cigarette products does not implicate a sense of immediacy that would justify such drastic measures. Unlike the search undertaken in *Holmes* which implicated illegal drug use and distribution, Sylvester’s search concerned legal products which pose a lesser danger. Here, the substances in question are not categorically outlawed, but are only implicated because of the potential time and place they were consumed. Thus, Sylvester’s actions more closely resemble the “quantum leap” of the strip-search in *Redding* than the measured response in *Holmes*.

Sylvester’s search through Senanayake’s financial transactions and his Notes entries was not a series of increasingly intrusive searches that required additional justification like the principal’s increasingly expansive search of the student’s purse in *T.L.O.* Unlike in *T.L.O.* where the expansion of the search confined to a single object was justified by each subsequent discovery, Sylvester continued to read through multiple Notes entries to vindicate her strained hypothesis. Sylvester looked through a to-do-list, a reminder for a homework assignment, and a love note before she found the purportedly incriminating list of payments detailing e-cigarette transactions. The absence of any evidence in the three notes justifying further intrusion rendered

the broadening of the scope of the search unreasonable. Sylvester should have ceased her examination of the intimate facets of Senanayake's life detailed in his Notes application to avoid violating Senanayake's Fourth Amendment rights. A reasonable jury could conclude that the expansion of the search was not justified by the information obtained from the previous Notes entries. Consequently, the defendants cannot establish that the Second Search was reasonable as a matter of law.

Applicant Details

First Name	Hiep
Last Name	Nguyen
Citizenship Status	U. S. Citizen
Email Address	hiepn@berkeley.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>3525 Sierra Road</div> <div>City</div> <div>San Jose</div> <div>State/Territory</div> <div>California</div> <div>Zip</div> <div>95132</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	(408) 455-8716

Applicant Education

BA/BS From	University of California-Berkeley
Date of BA/BS	August 2018
JD/LLB From	University of California, Berkeley School of Law
	https://www.law.berkeley.edu/careers/
Date of JD/LLB	May 12, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Berkeley Journal of International Law California Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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5106426483

Vidal-Manou, Maria Eugenia
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song, sarah
ssong@law.berkeley.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

HIEP NGUYEN

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June 13, 2023

The Honorable Kiyo Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room 905 S
New York, NY 11201

Dear Judge Matsumoto:

I am an incoming law clerk at Skadden and a recent graduate of the University of California, Berkeley, School of Law. I write to apply for a clerkship in your chambers for the 2025–2026 and subsequent terms.

Growing up with a stutter, I never thought becoming an attorney would be possible. However, by reciting poetry, volunteering to speak during class activities, and taking leadership roles in student organizations, I overcame my disability. Taking the challenging journey to find my voice motivated me to advocate for communities without one. As a college organizer with Habitat for Humanity, I convinced local governments to build more affordable housing and stood up for working families whose children needed tutoring and childcare. After graduating, I helped my county's public health agency expand access to opioid overdose medication.

These experiences inspired me to return to Berkeley for law school, where thought-provoking classes and jobs molded me into a more effective advocate. Drafting firearm regulations and guiding an Iraqi refugee through immigration applications showed me how to break down complex information into simple language. Defending federal officers' conduct in a mass tragedy taught me how to take perspectives different from my own. Advancing the language rights of Social Security beneficiaries demonstrated to me the power of listening in writing successful arguments. And designing a more accessible law review website revealed to me how teamwork and a little perseverance often make what seems impossible a reality.

As your law clerk, I would be humbled to combine these advocacy skills with my passion for public service to thoughtfully research key issues, consider all viewpoints, and help your chambers advance justice. I also hope to better serve others with the legal analysis and writing skills gained from a judicial clerkship.

Thank you for considering my application.

Sincerely,



Hiep Nguyen

HIEP NGUYEN

3525 Sierra Road | San Jose, CA 95132 | (408) 455-8716 | hiepn@berkeley.edu

EDUCATION

University of California, Berkeley, School of Law, Juris Doctor, May 2023

Activities: *California Law Review*, Senior Technology Editor

Berkeley Journal of International Law, Senior Online Editor

Asian and Pacific American Law Students Association, Dale Minami Chair

Honors: Teresa K. Lippert Distinguished Service Award, *California Law Review*, Recipient

International Law Certificate, Recipient

Pro Bono Honors, Recipient

Publications: Livable Cities for All, CALIF. L. REV. ONLINE (forthcoming, 2023).

Be Not Afraid, CALIF. L. REV. ONLINE (Apr. 2022).

University of California, Berkeley, Bachelor of Arts, Integrative Biology, August 2018

Honors: Marian Diamond Award for Research and Teaching, Recipient

Department Commencement, Speaker

EXPERIENCE

California Law Review

Berkeley, CA

Senior Technology Editor

August 2021–June 2023

Served on a fifteen-person Executive Committee that directed journal policy and led a team of over 180 editors. Redesigned the *CLR* website and print edition cover, shifted the journal to Google Drive, and introduced new USB-C monitors. Developed the *CLR Podcast* into its own publication. Modernized the journal's transition process, graphic design, social media, and communications. Rebuilt *CLR*'s community.

University of California, Berkeley, School of Law

Berkeley, CA

Researcher

November 2022–June 2023

Worked with Professor Kristen Holmquist to examine how exclusionary zoning has exacerbated wealth inequality, road fatalities, poor community health, and urban bankruptcy. Proposed reforms that included missing middle density homes, safer and more efficient road designs, and expanded transportation options.

Skadden, Arps, Slate, Meagher & Flom LLP

Palo Alto, CA and Washington, DC

Summer Associate

May 2022–July 2022

Researched standards for equitable estoppel, futility, and third-party beneficiary exception in multidistrict litigation involving airbag defects. Analyzed civil procedure rules. Recommended that an energy company pursue a waiver of untimely objections to discovery requests. Investigated a nonprofit's investment in defaulted student loans. Evaluated whether in-videogame consumable items constituted gambling. Examined sexual harassment legislation. Assessed mistrial rules in trade secret litigation.

Giffords Law Center to Prevent Gun Violence and Brady Legal

San Francisco, CA

Director, Berkeley Law Gun Violence Prevention Project

September 2020–June 2022

Developed safe storage, closed-circuit videotaping, and trigger lock legislation. Maintained gun law databases. Co-managed twenty students. Coordinated meetings and assignments with supervising attorneys.

U.S. Department of Justice, Federal Tort Claims Act (FTCA) Section

Washington, DC

Law Clerk

June 2021–August 2021

Drafted recommendations on malicious prosecution, fraudulent conspiracy theory, and wrongful imprisonment claims. Wrote stipulations and organized dozens of cases implicating federal agents in a mass shooting incident. Researched the FTCA's statute of limitations, equitable tolling principles, and standards of review.

INTERESTS

Cycling, graphic design, scrapbooking, Southeast Asian cooking, *Star Trek*, and swimming.

Berkeley Law

University of California

Office of the Registrar

Hiep Nguyen
Student ID: 25282313
Admit Term: 2020 Fall

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Page 1 of 2

Academic Program History						2021 Fall					
Major: Law (JD)						<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>	
Awards						LAW 222	Federal Courts	4.0	4.0	H	
International Law Certificate						LAW 241	Erwin Chemerinsky Evidence	4.0	4.0	P	
						LAW 266.5	Andrea Roth Poverty Law and Policy	3.0	3.0	HH	
						LAW 270.72	Abbye Atkinson Pathways to Carbon Neutrality	2.0	2.0	H	
							Fan Dai Daniel Farber				
							Robert Infelise Calif Law Review	1.0	1.0	CR	
							Saira Mohamed				
								<u>Units</u>	<u>Law Units</u>		
							Term Totals	14.0	14.0		
							Cumulative Totals	44.0	44.0		
2020 Fall											
<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>							
LAW 200F	Civil Procedure	5.0	5.0	H							
	Andrew Bradt										
LAW 201	Torts	4.0	4.0	P							
	Richard Davis										
LAW 202.1A	Legal Research and Writing	3.0	3.0	CR							
	Michelle Cole										
LAW 202F	Contracts	4.0	4.0	P							
	Manisha Padi										
		<u>Units</u>	<u>Law Units</u>								
	Term Totals	16.0	16.0								
	Cumulative Totals	16.0	16.0								
2021 Spring											
<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>							
LAW 202.1B	Written and Oral Advocacy	2.0	2.0	P							
	Michelle Cole										
	Units Count Toward Experiential Requirement										
LAW 220.6	Constitutional Law	4.0	4.0	H							
	Michelle Cole										
	Fulfills Constitutional Law Requirement										
LAW 230	Criminal Law	4.0	4.0	H							
	Erwin Chemerinsky										
LAW 261	Saira Mohamed	4.0	4.0	H							
	International Law										
	Katerina Linos										
		<u>Units</u>	<u>Law Units</u>								
	Term Totals	14.0	14.0								
	Cumulative Totals	30.0	30.0								
						2022 Spring					
<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>		<u>Course</u>	<u>Description</u>	<u>Units</u>	<u>Law Units</u>	<u>Grade</u>	
LAW 220.9	First Amendment	3.0	3.0	HH		LAW 220.9	First Amendment	3.0	3.0	HH	
	Sarah Song					LAW 223	Administrative Law	4.0	4.0	HH	
LAW 223	Kenneth Bamberger					LAW 223.1	Election Law	3.0	3.0	H	
	Fulfills 1 of 2 Writing Requirements										
LAW 244.1	Abhay Aneja	3.0	3.0	H		LAW 244.1	Adv Civ Pro:Complex Civil Lit	3.0	3.0	H	
	Andrew Bradt					LAW 295.1G	Calif Law Review	1.0	1.0	CR	
LAW 295.1G	Amanda Tyler										
		<u>Units</u>	<u>Law Units</u>					<u>Units</u>	<u>Law Units</u>		
	Term Totals	14.0	14.0				Term Totals	14.0	14.0		
	Cumulative Totals	58.0	58.0				Cumulative Totals	58.0	58.0		


 Carol Rachwald, Registrar

Berkeley Law

University of California

Office of the Registrar

Hiep Nguyen
Student ID: 25282313
Admit Term: 2020 Fall

Printed: 2023-06-08 15:35
Page 2 of 2

2022 Fall					
Course		Description	Units	Law Units	Grade
LAW	231	Crim Procedure- Investigations	4.0	4.0	H
LAW	250	Erwin Chemerinsky Business Associations	4.0	4.0	P
LAW	252.2	Frank Partnoy Antitrust Law	4.0	4.0	P
LAW	270.6	Prasad Krishnamurthy Energy Law & Policy	3.0	3.0	P
LAW	299	Sharon Jacobs Indiv Res Project	2.0	2.0	HH
Fulfills 1 of 2 Writing Requirements					
Kristen Holmquist					
			<u>Units</u>	<u>Law Units</u>	
Term Totals			17.0	17.0	
Cumulative Totals			75.0	75.0	

2023 Spring					
Course		Description	Units	Law Units	Grade
LAW	208I	Intl & Foreign Legal Research	3.0	3.0	HH
Units Count Toward Experiential Requirement					
LAW	210	Marci Hoffman Legal Profession	2.0	2.0	P
Fulfills Professional Responsibility Requirement					
LAW	226.1T	Andrew Dilworth Local Government Law	3.0	3.0	P
Fulfills 1 of 2 Writing Requirements					
LAW	243.5I	Eric Casher Designing Government Services	1.0	1.0	CR
Units Count Toward Experiential Requirement					
LAW	263	Nicole Zeichner Int'L Human Rights	3.0	3.0	P
LAW	271.7I	Saira Mohamed International Environ Law	2.0	2.0	H
Neil Popovic					
			<u>Units</u>	<u>Law Units</u>	
Term Totals			14.0	14.0	
Cumulative Totals			89.0	89.0	



 Carol Rachwald, Registrar

University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	-	High Honors	CR	-	Credit
H	-	Honors	NP	-	Not Pass
P	-	Pass	I	-	Incomplete
PC	-	Pass Conditional or Substandard Pass (1997-98 to present)	IP	-	In Progress
NC	-	No Credit	NR	-	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: <https://www.law.berkeley.edu/careers/for-employers/grading-policy/>

Transcript questions should be referred to the Registrar.

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June 2, 2022

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Dear Judge Matsumoto:

I am writing to highly recommend Mr. Hiep Nguyen for a judicial clerkship. Mr. Nguyen was a student in two of my classes: Constitutional Law and Federal Courts. He received an Honors grade in both classes, as he has in most of his classes at Berkeley Law. His exams were excellent, reflecting thorough preparation, deep knowledge of the material, and strong analytical skills.

Mr. Nguyen is an editor of two law reviews: California Law Review and the Berkeley Journal of International Law. I have read his published law review note on the Ukraine and human rights and thought it was very impressive in its content and its writing. These experiences will serve him well as a law clerk. They demonstrate his hard work, his ability to handle multiple tasks effectively, and his strong writing and editing skills.

I always have found him to be a very kind and warm person. I know that you would very much enjoy working with him and that he would be a very positive presence in your chambers. I have no doubt that he would do an excellent job as your law clerk.

Sincerely,

Erwin Chemerinsky

Erwin Chemerinsky - echemerinsky@law.berkeley.edu - 5106426483



CALIFORNIA LAW REVIEW

California Law Review

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To Whom It May Concern,

We have had the pleasure of working closely with Hiep for the past two years and are proud to recommend him for a judicial clerkship.

Fatima Ladha, Editor-in-Chief, Volume 111:

One of Hiep Nguyen's greatest strengths is his ability to work collaboratively within a team. As the Editor-in-Chief for the California Law Review, having Hiep as the Senior Technology Editor over the past year has ensured that we lead legal publications nationally with regard to technological features. Over the past year, Hiep replaced all the hardware in the California Law Review office with updated technology, working with the school and the journal's leadership to secure funding and technical support in making the change. Furthermore, he streamlined and updated our website to facilitate our audience's legal research and citations. He also developed our podcast, and, now, California Law Review is one of the only top law reviews in the country with a podcast, if not the only one. More than his accomplishments, Hiep is a hard worker. He recognizes his value as a team member by always completing his tasks in a timely and efficient manner. He is communicative, generous with his expertise, and thoughtful about navigating his academic demands with his responsibilities towards the journal. Hiep is always willing to go the extra mile to support their colleagues. He actively listens to others, values diverse opinions, and readily offers assistance when others need it.

Moreover, Hiep possesses exceptional planning and organizational skills. He is meticulous in his approach to tasks and consistently deliver high-quality work. Our Technological advancements over the past year under Hiep's leadership has set California Law Review up for success for many years to come. Hiep is able to accomplish so much because he consistently produces thorough and well-structured plans that not only meet objectives but also account for potential challenges and risks. He recognizes the limitations of his plans and adapts accordingly when needed. For example, Hiep planned all his changes to the journal's technology during the academic year, and, when roles transitioned and the new volume's leadership team took over, he made sure to fold in the incoming Senior Technology Editor and adequately train her so that she could take over his plans, setting the California Law Review for future success.

I have witnessed Hiep's outstanding performance firsthand over the last year. His thoughtfulness and attention to detail, combined with his strategic thinking and team-oriented mindset, have consistently contributed to successful outcomes at the journal. Hiep will be a pleasure to work with and I enthusiastically recommend him for Your Honor's chambers.

Chloe Pan, Editor-in-Chief, Volume 112:

Hiep is remarkable for his unwavering dedication to teamwork and meticulousness. Furthermore, he demonstrates a willingness to tackle tasks that may not always receive immediate recognition, but ultimately yield substantial long-term benefits for the journal. For example, he replaced decades-old

computers in our physical office with grand new monitors. This upgrade revitalized our office, creating a more functional and collaborative environment for our 170+ journal members. Hiep also took the initiative to formalize our journal's podcast into its own fully-fledged production, modernized our journal's transition process, and played a pivotal role in mentoring and supporting associate editors. For his efforts, he was widely nominated by his peers to receive the CLR Distinguished Service Award.

Maro Vidal-Manou, Administrator:

I am the California Law Review administrator and worked closely with Hiep on several tasks during his tenure with our journal. I found him to be a very strong communicator and one who took initiative. He has designed and built the law review's new website that has been met with great reviews. He also organized several events for the members with success and designed a new cover for the journal that will be implemented starting on the June 2023 issue.

Hiep will certainly be missed because he was consistently a pleasure to work with and always performed his work with joy.

Thank you for considering our letter. Hiep will make an outstanding judicial clerk, and we give him our strongest recommendation.



Fatima Ladha
Editor-in-Chief, Volume 111, *California Law Review*
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Chloe Pan
Editor-in-Chief, Volume 112, *California Law Review*
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Maro Vidal-Manou
Administrator, *California Law Review*
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June 6, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Re: Clerkship Candidate Hiep Nguyen

Dear Judge Matsumoto:

I write to enthusiastically recommend Hiep Nguyen for a clerkship in your chambers. Hiep was a student in my First Amendment Law course in spring 2022. He was one of the 5 strongest students in the class and received a grade of HH. His outstanding analytical and writing skills, his capacity for hard work, and his experience working closely with others as part of a team all suggest he would be a successful law clerk.

Out of the 61 students in my course, Hiep stood out for his contributions in class and his performance on the final exam. He consistently made incisive contributions to class discussions. I use a panel method to foster participation, notifying students a week in advance when they will be on call. Hiep was always well-prepared and gave concise, thoughtful answers to the questions I posed in class. While he did not talk as much as the most vocal students in the class, I clearly remember Hiep raising his hand several times when I asked for volunteers. During one particularly engaging discussion on hate speech in the context of high schools and universities, I asked students to offer arguments for and against restrictions on hate speech. Hiep raised a particularly incisive example from his own high school to demonstrate the unintended consequences of speech restrictions and identify potential tensions between principled and pragmatic considerations in debates about hate speech regulations.

Since I have not worked closely with Hiep on any research, I cannot comment on his research skills, but I can speak to his intellectual abilities and writing skills as reflected on his final exam. Hiep's final exam was among the 5 best in the class. He demonstrated deep understanding of First Amendment doctrine and developed clear, well-substantiated arguments in support of his conclusions. In all his answers, Hiep not only correctly identified and applied the relevant legal standards; he also masterfully synthesized the relevant cases, making subtle distinctions among the cases while building a compelling line of argument. I was impressed by his ability to analyze complex facts and legal doctrines and effectively articulate persuasive legal arguments.

Hiep's successes extend beyond the classroom. He has deepened his research and writing skills as a Law Clerk for the U.S. Department of Justice, Federal Tort Claims Act (FTCA) Section, where he drafted memoranda for the FTCA Director's review involving an alleged malicious prosecution claim and wrote stipulations and organized claims implicating FBI agents in a high-profile mass shooting incident. As Senior Technology Editor of the *California Law Review*, he has overseen final editing and publication of all print and online articles and managed and edited the journal's podcasts, among other responsibilities. He also serves on CLR's 15-member Executive Committee, which makes decisions on journal policy. He has deepened his editing skills as Senior Online Editor of the *Berkeley Journal of International Law*. Hiep has also acquired valuable research and writing experience as a Researcher for the Center for Law, Energy, and the Environment (CLEE) at Berkeley Law and the Giffords Law Center to Prevent Gun Violence and Brady Legal for which he developed firearm regulation proposals and presented them to elected municipal officials.

Through his work experience and participation in law journals and other activities, Hiep has had many opportunities to develop personal qualities that will serve him well as a judicial clerk. He has honed his ability to take initiative and direction, work well under pressure, and be a team player who cooperates closely with others. I came to appreciate Hiep's personal qualities even more after learning about his personal and family circumstances. His father, a refugee who came to the U.S. in the wake of the Vietnam War, has had a powerful influence on Hiep as a model of resilience in the face of adversity. Hiep drew on this resilience as he overcame a childhood stutter through hard work and persistence. These experiences have instilled in Hiep a deep empathy and passion for advocating on behalf of communities that have historically lacked power and voice.

Here is one final anecdote to give you a better sense of Hiep. A few weeks into the semester, I ran into Hiep on the street near Berkeley Law School. We had met for class earlier that day and Hiep had been on call. I had confidently pronounced his name "Heep." When I ran into him later, we talked about how his semester was going and at the end of our conversation, I asked him if I had pronounced his name correctly in class. He smiled warmly and said, "It's actually pronounced Hee-ehp. Thank you for asking." We both smiled, me a bit sheepishly. I thanked him and we talked a bit more about the class and then we both went on our way. Reflecting back on this, I realize I couldn't have been the first person to mispronounce Hiep's name and am struck by the patience, warmth, and good humor he displayed in that encounter.

For all these reasons, I believe Hiep would make an outstanding judicial clerk. With his energy, dedication, and qualities of mind, he would rise to the challenge of your clerkship and be a productive presence in your chambers. If you have any questions or would like to hear more about Hiep, I would be happy to speak with you by phone (510-230-7814) or email (ssong@law.berkeley.edu).

Sincerely,

Sarah Song

sarah song - ssong@law.berkeley.edu

The Milo Rees Robbins Chair of Legal Ethics Professor of Law
Professor of Philosophy and Political Science
University of California, Berkeley
School of Law

sarah song - ssong@law.berkeley.edu



U.S. Department of Justice

Civil Division

RSP:TNA:HNguyen:hn
391-33-83625

The following writing sample is a memorandum I wrote as a law clerk at the United States Department of Justice's Federal Tort Claims Act Section during the summer of 2021. The facts of this claim have been changed to anonymize the people involved.

July 27, 2021

**MEMORANDUM FOR JAMES G. TOUHEY, JR.
DIRECTOR, FEDERAL TORT CLAIMS ACT SECTION**

Re: Administrative Tort Claim of John Doe

TIME LIMIT:

At your earliest convenience

NATURE OF CLAIM:

Fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts

AMOUNT OF CLAIM:

\$5 million

RECOMMENDATION

Based on the information contained in this record, I recommend that Mr. John Doe's claim for \$5 million against the United States be denied. Mr. Doe's claim deals exclusively with non-federal officers, is untimely under the statute of limitations of the Federal Tort Claims Act (FTCA) and relies on the thoroughly discredited Redemption Theory. Moreover, under the FTCA, sovereign immunity is not waived as to Mr. Doe's accusations of fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts.

FACTS

A. Administrative Claim Background

1. Submission of Claim

Mr. Doe submitted an administrative claim dated January 13, 2021, requesting \$5 million in compensation for damage and injury to his body, likeness, and name during his incarceration in Wisconsin state prisons.¹ He deems the three aforementioned items to be his commercial property.² The Department of Justice (Department) received his claim on January 25, 2021, and confirmed receipt on February 20, 2021.³ Mr. Doe alleges that these injuries have occurred continuously since February 21, 2007.⁴ He sent additional documents to support his claim on April 12, 2021.⁵ The Department received these documents on April 26, 2021, and confirmed receipt on May 19, 2021.⁶

2. Nature of Claims

Mr. Doe alleges that his body, likeness, and name are his privately secured property and were fraudulently taken from him and falsely imprisoned by the following three officers of the State of Wisconsin (Wisconsin): former Governor Scott Walker, former Attorney General Lisa Schultz, and former Kenosha County, Wisconsin, State Attorney (KCSA) Anita Reed.⁷ He also claims that Governor Tony Evers, Attorney General Lloyd Voss, and KCSA Kimberly M. Thomasen bear responsibility for the purported wrongs committed by their predecessors.⁸ Moreover, Mr. Doe alleges damage to his body, likeness, and name through malicious prosecution involving coercion, force, and duress as well as subsequent incarceration in poor conditions.⁹ He claims libel, slander, and defamation through unlawful dissemination of his private property, including his name and likeness, without his permission.¹⁰ Lastly, Mr. Doe states that his constitutional rights were violated during his arrest and detention.¹¹

Mr. Doe submits two documents to support his contention that his body, likeness, and name are his private property. The first is a private security agreement with a purported effective date of February 8, 1984, notarization date of July 31, 2013, and signature date of February 13, 2020.¹² This agreement claims that Mr. Doe is the sole owner of his body, likeness, and name, and by extension, he has exclusive rights to all court documents and judgments

¹ Tab A, Standard Form 95 of John Doe dated Jan. 13, 2021 (Doe SF-95) § 12.

² Tab A, Doe SF-95 § 10.

³ Tab B, Letter from Mary B. Casitas to John Doe dated Feb. 20, 2021 (Casitas Letter I).

⁴ Tab A, Doe SF-95 § 8.

⁵ Tab C, Letter from Mary B. Casitas to John Doe dated May 19, 2021 (Casitas Letter II).

⁶ *Id.*

⁷ Tab A, Doe SF-95 § 8, 10; Tab D, Memorandum from John Doe to Wisconsin (Doe Memo), at 2.

⁸ Tab D, Doe Memo at 1, 4.

⁹ Tab A, Doe SF-95 § 10; Tab E, Doe Aff. I at 1-2; Tab F, Notice to Principal, John Doe-Kenosha County, Apr. 12, 2021 (Doe Notice to Principal), at 1-2.

¹⁰ Tab A, Doe SF-95 § 10; Tab D, Doe Memo at 6; Tab F, Doe Notice to Principal at 1-2.

¹¹ Tab E, Doe Aff. I at 2.

¹² Tab G, Private Security Agreement, John Doe, Feb. 18, 1984 (Doe Security Agreement), at 1, 16-17.

concerning him.¹³ The private security agreement also contains a schedule dated February 8, 1984, that lists various forms of government identification to support his ownership claim.¹⁴ The second is a copyright document, dated February 8, 1984, and signed on December 13, 2020, that details when and where his name may be used.¹⁵

Mr. Doe also offers a variety of other documents in support of his allegations that the government owes him money for the injuries that transpired during its use of his body, likeness, and name. These include the following:

- An undated commercial fraud complaint sent to the Federal Bureau of Investigation's Public Corruption Unit in Milwaukee, Wisconsin.
- A complaint against the KCSA's office dated July 26, 2013, and sent to the Attorney Registration and Disciplinary Commission of the Supreme Court of Wisconsin.
- An affidavit against Judge Patrick K. Adams of the Kenosha County Judicial Circuit Court dated July 26, 2013, and sent to the Wisconsin Judicial Inquiry Board.¹⁶
- An affidavit sent to former U.S. Attorney General Eric Holder on July 25, 2013, that attempted to initiate a False Claims Act investigation.¹⁷
- A constructive cease and desist notice, dated March 31, 2015, sent to Attorney General Schultz and Ms. Reed.¹⁸
- Presentment letters to Attorney General Schultz and Ms. Reed, dated and notarized on June 2, 2015, demanding proof of their claims against him and threatening Ms. Reed with default within 21 days if the letters were left unanswered.¹⁹
- Notarizations of a lack of response to the aforementioned presentment letters on July 17, 2015, and August 6, 2015.²⁰
- A notice of default sent to both Attorney General Schultz and Ms. Reed, but addressed only to Ms. Reed, on August 1, 2015.²¹
- Two affidavits sent to Wisconsin and Governor Evers that allege the same torts listed in Mr. Doe's FTCA claim.²²

¹³ *Id.* at 1, 6, 10.

¹⁴ *Id.* at 18.

¹⁵ Tab H, Common Law Copyright Notice, John Doe, Feb. 8, 1984 (Doe Copyright Notice), at 1, 4.

¹⁶ Tab E, Doe Aff. I at 1-2; Tab I, Commercial Fraud Complaint, John Doe-Federal Bureau of Investigation (Doe Commercial Fraud Complaint), at 1; Tab J, Complaint Against Kenosha County State Attorney's Office, John Doe-Supreme Court of Wisconsin (Doe Kenosha County Complaint), at 1.

¹⁷ Tab K, Doe Aff. II at 1.

¹⁸ Tab L, Cease and Desist Notice, John Doe-Kenosha County, Mar. 31, 2015 (Doe Cease and Desist Notice), at 1, 4, 6.

¹⁹ Tab M, Presentment Letter, John Doe-Anita Reed, Jun. 2, 2015 (Doe-Reed Presentment Letter), at 1-2; Tab N, Presentment Letter, John Doe-Lisa Schultz, Jun. 2, 2015 (Doe-Schultz Presentment Letter), at 1-2; Tab O, Dix Aff. I; Tab P, Dix Aff. II.

²⁰ Tab Q, Dix Aff. III; Tab R, Dix Aff. IV; Tab S, Dix Aff. V; Tab T, Dix Aff. VI.

²¹ Tab U, Default Notice, John Doe-Anita Reed, Aug. 1, 2015 (Doe Default Notice), at 1.

²² Tab D, Doe Memo at 1; Tab V, Doe Aff. III at 1.

3. Previous Claims

First, in a complaint sent to the Supreme Court of Wisconsin on July 26, 2013, and an affidavit sent to Attorney General Holder on July 25, 2013, Mr. Doe notes that Wisconsin owed him a \$7 million security interest originally due on February 27, 2007, for the value of his body, likeness, and name.²³ He updated the claim to \$100 million in 2009 and filed a lien for this amount against Wisconsin in a document notarized on July 31, 2013.²⁴ In a notice sent to Wisconsin on December 8, 2020, and in affidavits sent to Attorney General Holder and Governor Evers, Mr. Doe repeatedly argues that Wisconsin has never satisfied his lien request and continues to benefit unfairly from usage of his property.²⁵

Second, on August 1, 2015, when Ms. Reed did not respond to his presentment letter demanding proof of her claims against him, Mr. Doe claimed that Ms. Reed owed him a \$125,000 penalty plus 25% annual interest compounded daily.²⁶

Third, in the notice that Mr. Doe sent to Wisconsin on December 8, 2020, he claimed \$16 million for the same torts listed in his FTCA claim.²⁷ He offered to settle for \$5 million in return for Wisconsin's recognition of his ownership over his body, likeness, and name.²⁸ On April 12, 2021, Mr. Doe revised this claim against Wisconsin to a \$15 million sum certain.²⁹ He offered to settle for 25% of his sum certain (\$3.75 million) in return for Wisconsin's recognition of his ownership claim.³⁰

B. Court and Criminal Records

1. Sex Offenses

Mr. Doe is a registered sex offender with a history of sexual assaults and sexual abuse.³¹ This record began on May 29, 2004, when Mr. Doe was arrested for aggressive criminal sexual abuse and criminal sexual assault in Wisconsin.³² Charges were filed against him in a Wisconsin court on July 26, 2004.³³ That court found him guilty of both crimes and sentenced him on May 5, 2005.³⁴ Mr. Doe was credited for time already served.³⁵

In addition, on March 20, 2007, a case was filed against Mr. Doe in Wisconsin for aggressive criminal sexual abuse, aggressive criminal sexual abuse against a victim less than one

²³ Tab J, Doe Kenosha County Complaint at 2; Tab K, Doe Aff. II at 2.

²⁴ *Id.*; Tab G, Doe Security Agreement at 20.

²⁵ Tab K, Doe Aff. II at 2; *see* Tab D, Doe Memo at 4; Tab V, Doe Aff. III at 2.

²⁶ Tab U, Doe Default Notice at 2.

²⁷ Tab D, Doe Memo at 8.

²⁸ *Id.*

²⁹ Tab F, Doe Notice to Principal at 5.

³⁰ *Id.*

³¹ Tab W, Wisconsin Registered Sex Offender Report for John Doe dated Mar. 29, 2021 (Sex Offender Report), at 1-2.

³² Tab X, Wisconsin Court Report for John Doe dated Jul. 26, 2004 (Court Report I), at 1-2.

³³ Tab Y, Wisconsin Court Report for John Doe dated Jul. 26, 2004 (Court Report II).

³⁴ Tab X, Court Report I at 1-2; Tab Y, Court Report II.

³⁵ *Id.*

year of age, criminal sexual assault, and predatory criminal sexual abuse.³⁶ On February 4, 2008, a Wisconsin court found him guilty of all crimes and fined him \$510 per crime.³⁷ The court sentenced him but also credited him for time already served.³⁸

Moreover, on or about October 5, 2012, Mr. Doe performed another aggravated sexual assault of a victim under 13 years of age in Kenosha County. Even though he was required to register as a sex offender after this act, Mr. Doe was arrested in Kenosha County on May 4, 2013, for failing to do so.³⁹ A case was filed against him on May 24, 2013, and on November 1, 2013, a Wisconsin court found him guilty of not registering as a sex offender.⁴⁰ Mr. Doe was admitted to a state prison in Deerville, Wisconsin, for this charge on April 29, 2014.⁴¹

2. Other Violent Crimes

A court in Wisconsin also found Mr. Doe guilty of an aggressive battery against a fireman on August 24, 2000.⁴² He was given the maximum sentence of two years, which he served at a state prison in Green Bay, Wisconsin, starting September 25, 2000.⁴³

LIABILITY

Under the FTCA, the federal government may be held liable for:

money damages . . . for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.⁴⁴

A. Non-federal officers

The FTCA only covers claims against federal employees.⁴⁵ Governor Evers, Governor Walker, Attorney General Schultz, Attorney General Voss, KCSA Thomasen, and Ms. Reed are all officers or employees of Wisconsin and are not employed by the federal government.⁴⁶ Therefore, Mr. Doe's FTCA claims are not cognizable.

³⁶ Tab Z, Wisconsin Court Report for John Doe dated Mar. 20, 2007 (Court Report III), at 1-2.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Tab W, Sex Offender Report at 1-2.

⁴⁰ Tab AA, Wisconsin Court Report for John Doe dated May 24, 2013 (Court Report IV), at 1-2.

⁴¹ Tab AB, Wisconsin Department of Corrections Report for John Doe dated Apr. 29, 2014 (Corrections Report I).

⁴² Tab AC, Wisconsin Court Report for John Doe dated Aug. 24, 2000 (Court Report V).

⁴³ Tab AD, Wisconsin Department of Corrections Report for John Doe dated Sep. 25, 2000 (Corrections Report II).

⁴⁴ 28 U.S.C. § 1346(b)(1).

⁴⁵ 28 U.S.C. § 2671 (“[an] ‘employee of the government’ includes (1) officers or employees of any federal agency . . . (2) any officer or employee of a Federal public defender organization”).

⁴⁶ Tab D, Doe Memo at 1.

B. Statute of Limitations

Under the FTCA, a claim accrues within two years.⁴⁷ The statute of limitations begins once Mr. Doe “becomes subjectively aware of the government’s involvement in the injury” or when he “acquires information that would prompt a reasonable person to inquire further into a potential government-related cause of the injury, whichever happens first.”⁴⁸

Here, the claimant alleges the injuries first took place on February 21, 2007.⁴⁹ Mr. Doe was aware of the central aspects of his claim, including false arrest, malicious prosecution, imprisonment in poor conditions, wrongful incarceration, and wrongful custody of property from at least July 25, 2013, the earliest date where he sent a document alleging these tort claims.⁵⁰ Mr. Doe was clearly aware of these facts for over seven years before he filed his current claims on January 13, 2021. Therefore, the FTCA’s statute of limitations bars his claim.

C. FTCA Exceptions

Even if federal employees were involved and the claims were timely, there is no liability. Mr. Doe’s claims of injury and damage to his private property are all barred by exceptions to the FTCA’s waiver of sovereign immunity.⁵¹ These include his actual or implied claims of fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts that arise out of Attorney General Schultz and Ms. Reed carrying out their prosecutorial duties.

1. Fraud Claims

With regards to Mr. Doe’s claim for fraudulent custody of his body, likeness, and name, the FTCA’s sovereign immunity waiver does not apply to any fraud claims arising out of misrepresentation or deceit.⁵² This includes Mr. Doe’s allegations that prosecutors concealed facts, embezzled public funds, evaded taxes, forged papers, made misleading statements, and misused his name and property.⁵³ Individuals guilty of misrepresentation and deceit commit fraud because they willfully mislead others to unlawfully obtain and abuse others’ property.⁵⁴

Therefore, Mr. Doe’s claim based on fraud fails under the FTCA.

⁴⁷ 29 U.S.C. § 2401(b).

⁴⁸ *E.Y. ex rel. Wallace v. United States*, 758 F.3d 861, 866 (7th Cir. 2014).

⁴⁹ Tab A, Doe SF-95 § 8.

⁵⁰ Tab K, Doe Aff. II at 1-2, 4.

⁵¹ *Millbrook v. United States*, 569 U.S. 50, 54 (2013); *FDIC v. Meyer*, 510 U.S. 471, 477 (1994); *Neustadt v. United States*, 366 U.S. 696, 711 (1961); *Nguyen v. United States*, 556 F.3d 1244, 1252 (11th Cir. 2009); *Bramwell v. U.S. Bureau of Prisons*, 348 F.3d 804, 806 (9th Cir. 2003); *Beneficial Consumer Disc. Co. v. Poltonowicz*, 47 F.3d 91, 96 (3d Cir. 1995); *Talbert v. United States*, 932 F.2d 1064, 1067 (4th Cir. 1991); *Bonilla v. United States*, 652 F. App’x 885, 890 (11th Cir. 2016).

⁵² Tab A, Doe SF-95 § 8, 10; Tab D, Doe Memo at 2, 4; Tab J, Doe Kenosha County Complaint at 2; Tab K, Doe Aff. II at 3; see *Neustadt*, 366 U.S. at 711; *Poltonowicz*, 47 F.3d at 96.

⁵³ Tab I, Doe Commercial Fraud Complaint at 2; Tab L, Doe Cease and Desist Notice at 1, 4.

⁵⁴ See *United States v. Hoffman*, 901 F.3d 523, 538 (5th Cir. 2018) (citing *United States v. Morris*, 348 F. App’x 2, 3-4 (5th Cir. 2009)); *Clark v. Constellation Brands, Inc.*, 348 F. App’x 19, 21-22 (5th Cir. 2009).

2. False Arrest

Moreover, the federal government cannot be held liable for Mr. Doe's claims of false arrest.⁵⁵ Being Wisconsin state attorneys, Attorney General Schultz and Ms. Reed are also not law enforcement officials so they cannot be liable for false arrest claims.⁵⁶

3. Malicious Prosecution

The FTCA excludes Mr. Doe's malicious prosecution claims.⁵⁷ This includes his accusations that Attorney General Schultz and Ms. Reed used aggressive collection procedures, coercion, duress, extortion, force, and intimidation to compel his court appearance.⁵⁸

Moreover, the FTCA excludes Mr. Doe's implied malicious prosecution claims arising under the defamation, libel, and slander that he alleges Attorney General Schultz and Ms. Reed committed during their prosecution.⁵⁹ This includes claims that Attorney General Schultz and Ms. Reed unlawfully disseminated Mr. Doe's name through the Internet in their prosecution.⁶⁰

Thus, Mr. Doe's claims fail on this count.

4. False Imprisonment and Custody of Goods

The FTCA excludes Mr. Doe's claims of false imprisonment, which include allegations of unlawful economic and physical servitude that resembles slavery.⁶¹

Moreover, even if the government treated Mr. Doe's body, likeness, and name as the private property of his trust, the FTCA still excludes suits for wrongful government custody of private property and unlawful seizure of assets.⁶² Thus, this also invalidates Mr. Doe's claim.

5. Constitutional Torts

Mr. Doe alleges implied violations of his Fifth Amendment right to due process and Sixth Amendment right to self-representation.⁶³ The FTCA does not create an exception to sovereign immunity for constitutional matters, thus, his claim fails.⁶⁴

⁵⁵ 28 U.S.C. § 2680(h); *Nguyen*, 556 F.3d at 1252; Tab A, Doe SF-95 § 10.

⁵⁶ 28 U.S.C. § 2680(h); *Bonilla*, 652 F. App'x at 890.

⁵⁷ 28 U.S.C. § 2680(h); *Millbrook*, 569 U.S. at 54.

⁵⁸ Tab A, Doe SF-95 § 10; Tab J, Doe Kenosha County Complaint at 3; Tab K, Doe Aff. II at 3-4.

⁵⁹ *Talbert*, 932 F.2d at 1067; Tab A, Doe SF-95 § 10; Tab D, Doe Memo at 6; Tab F, Doe Notice to Principal at 1-2; Paul F. Figley, *Understanding the Federal Tort Claims Act: A Different Metaphor*, 44:3/44:4 TORT TRIAL & PRAC. L. J. 1105, 1129 (2009) (citing 28 U.S.C. § 2680(h)).

⁶⁰ *Schneider v. United States*, 936 F.2d 956, 959 (7th Cir. 1991); Tab A, Doe SF-95 § 10; Tab F, Doe Notice to Principal at 3; Tab K, Doe Aff. II at 2.

⁶¹ 28 U.S.C. § 2680(h); Tab A, Doe SF-95 § 10; Tab F, Doe Notice to Principal at 2.

⁶² *Bramwell*, 348 F.3d at 806; Tab A, Doe SF-95 § 9-10; Tab G, Doe Security Agreement at 1, 6, 10; Tab H, Doe Copyright Notice at 1; Figley, *supra* note 59, at 1126 (citing 28 U.S.C. § 2680(c)).

⁶³ Tab A, Doe SF-95 § 8; Tab E, Doe Aff. I at 2.

⁶⁴ *FDIC*, 510 U.S. at 477; Figley, *supra* note 59, at 1110 (citing 28 U.S.C. § 1346(b)).

D. Redemption Theory

Mr. Doe's claim is founded upon the Redemption Theory, a duplicitous scheme where a person claims to be a Secured Party Creditor of themselves.⁶⁵ The theory has ties to the far-right Sovereign Citizen Movement.⁶⁶ Fringe groups believe that utilization of the gold standard is funded on the use of United States citizens as strawmen collateral to pay off its debts.⁶⁷

This false theory's adherents believe that individuals may regain control over the strawman by cashing in government documents for the value of their person or filing Universal Commercial Code documents alleging that the government is illegally holding and misusing their physical body without compensation, as Mr. Doe does.⁶⁸ When the government ignores or refuses these requests, individuals may argue that the government owes them damages related to the fraudulent holding and misuse of their body.⁶⁹ In this case, Mr. Doe filed an administrative tort claim for commercial damages to his body during the course of imprisonment.⁷⁰ Courts have all held the Redemption Theory to be unsound, and some have even convicted individuals who utilize the Redemption Theory of criminal charges such as counterfeit creation of tax forms.⁷¹ Mr. Doe's claims are, therefore, not legally sound and should be denied.

CONCLUSION

I recommend that Mr. John Doe's claim for \$5 million be denied. His claim involves state officers to which the FTCA does not apply. The FTCA's statute of limitations also bars Mr. Doe's claim. Furthermore, his claim alleges fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful seizure of property, and constitutional torts. All these alleged torts fall under exceptions to the FTCA's waiver of sovereign immunity. Last, Mr. Doe's claim is based on the thoroughly discredited Redemption Theory.

Hiep Nguyen
Law Clerk, Torts Branch

⁶⁵ UNIV. N.C. SCH. OF GOV'T, A QUICK GUIDE TO SOVEREIGN CITIZENS, 2 (2013), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Sov%20citizens%20quick%20guide%20Nov%202013.pdf>.

⁶⁶ ANTI-DEFAMATION LEAGUE, THE LAWLESS ONES: THE RESURGENCE OF THE SOVEREIGN CITIZEN MOVEMENT, 9 (2010), <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/lawless-ones-sovereign-citizen-movement-2010.pdf>.

⁶⁷ UNIV. N.C. SCH. OF GOV'T, *supra* note 65.

⁶⁸ *Id.* at 3; Tab D, Doe Memo at 2; Tab E, Doe Aff. I at 1; Tab G, Doe Security Agreement at 20.

⁶⁹ UNIV. N.C. SCH. OF GOV'T, *infra* note 65, at 3.

⁷⁰ Tab A, Doe SF-95 § 10; Tab E, Doe Aff. I at 1-2; Tab G, Doe Security Agreement at 20.

⁷¹ See e.g., *United States v. Molesworth*, 197 F. App'x 694, 697 (9th Cir. 2006) (affirming conviction based on attempts to recoup money under Redemption Theory).

Applicant Details

First Name	Alexander
Last Name	Nowakowski
Citizenship Status	U. S. Citizen
Email Address	amn114@georgetown.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>12 Kensington Ct</div> <div>City</div> <div>Princeton</div> <div>State/Territory</div> <div>New Jersey</div> <div>Zip</div> <div>08540</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5708147164

Applicant Education

BA/BS From	George Washington University
Date of BA/BS	May 2016
JD/LLB From	Georgetown University Law Center
	https://www.nalplawschools.org/employer_profile?FormID=961
Date of JD/LLB	May 22, 2022
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Mathieson, Christina
cm1855@georgetown.edu

Lopez, Jonathan
Jonathan.Lopez@allenoverly.com
+1 202 683 3800

Mayer, Michael
michael_mayer@nyed.uscourts.gov
(330) 416-1535

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ALEXANDER NOWAKOWSKI

12 Kensington Ct, Princeton, NJ 08540 | (570) 814-7164 | amn114@georgetown.edu

May 21, 2023

Chambers of the Hon. Kiyo A. Matsumoto
U.S. District Court
Eastern District of New York
Theodore Roosevelt U.S. Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Dear Judge Matsumoto:

I am writing to apply for an October 2025-26 term clerkship. I graduated *cum laude* from the Georgetown University Law Center and am currently clerking in the Eastern District of Texas for the Hon. Kimberly Priest Johnson, U.S. Magistrate Judge.

I have a specific interest in sentencing law and plan to pursue a career in federal prosecution, aspiring to work as an Assistant U.S. Attorney. As a judicial intern at the Eastern District of New York, I excelled writing fifteen Memorandum Opinion & Orders. I have continued to build on my judicial internship while working in the Eastern District of Texas, where I have drafted more than forty Report and Recommendations on a range of criminal and civil issues.

I am committed to public service, and my experience as an immigrant living throughout the United States has given me a special appreciation for the American judicial system. Additionally, my fiancée and I have close family connections to New York City. I have attached my resume, transcripts and a writing sample. The writing sample is a draft memorandum & order involving a First Step Act petition written for the chambers of the Hon. Kiyo A. Matsumoto when I was a judicial intern.

The following are references in support of my application and welcome inquiries:

The Hon. Kimberly Priest Johnson U.S. Magistrate Judge U.S. District Court for the Eastern District of Texas (214) 872-4857	Mr. Michael Mayer Clerk to Hon. Matsumoto michaelmayer87@gmail.com (330) 416-1535	Professor Christina Mathieson National Habeas Institute cm1855@georgetown.edu (202) 887-4510
---	--	---

Thank you for your time and consideration.

Respectfully,

Alexander Nowakowski

ALEXANDER NOWAKOWSKI

12 Kensington Ct, Princeton, NJ 08540 • (570) 814-7164 • amn114@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER

Washington, DC

Juris Doctor, *cum laude*

June 2022

GPA: 3.76

Activities: Institute of International Economic Law Fellow; Special Pro Bono Pledge Recognition; CALI Award (Habeas Corpus Post Conviction Practicum); Dean's List

THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

London, UK

Master of Science, with Merit, in International Political Economy

December 2017

Dissertation: *The Bush and Obama Administrations in the WTO - A Comparative Study of Disputes*

THE GEORGE WASHINGTON UNIVERSITY

Washington, DC

Bachelor of Arts, *summa cum laude*, in Economics & International Affairs; German Studies Minor

May 2016

GPA: 3.85

Honors: Deans Honor List; Delta Phi Alpha (German National Honor Society)

Activities: GW Presidential Scholarship (2012-2016); GW UNICEF Journal Founding Editor (2015-2016)

EXPERIENCE

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

Plano, TX

Term Clerkship in the Chambers of the Hon. Kimberly C. Priest Johnson, U.S. Magistrate Judge

Aug. 2022 – Aug. 2023

- Drafted approximately forty-five Report and Recommendations and Opinion and Orders on motions to dismiss, motions for summary judgment, and other complex civil matters
- Drafted approximately fifteen Report and Recommendations and Opinion and Orders on motions to dismiss indictment, motions to suppress, motions for detention, motion for revocation, and motions for conflict of counsel

U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, DC

Enforcement Division Internship

Jan. 2021 – Aug. 2021

- Supported “pump-and-dump,” Foreign Corrupt Practices Act (FCPA), market manipulation, and insider trading investigations through document review, analysis, preparation of questions for witness testimony, and legal research

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

New York, NY

Judicial Internship in the Chambers of the Hon. Kiyo A. Matsumoto

May 2020 – Dec. 2020

- Drafted decisions on *habeas corpus* petitions to vacate or amend judgment
- Researched sentencing enhancement application and drafting First Step Act memorandum & order
- Drafted Memorandum & Orders for civil law cases including social security appeals, motions to dismiss, patent infringement, Fair Labor Standards Act, and labor disputes

UBS

New York, NY

Global Equity Derivatives Compliance Officer/Group Risk Control Analyst, Graduate Rotational Training Program

Aug. 2017 – June 2019

- Provided business-aligned compliance advisory to Derivative and Structured Product desks, and draft policy regarding Marijuana Related Businesses, complex trades, risk management, and regulatory change
- *Financial Crime Compliance*: Strategic management and analysis of relevant regulation for changes within the bank secrecy anti-money laundering program across the investment bank and Wealth Management
- *Leveraged Finance Credit Risk*: Performed credit analysis for leveraged financing origination within the Group Industrials & Consumer Products portfolio to provide challenge that ensures the investment bank remains within its risk appetite

THE U.S. DEPARTMENT OF STATE

Washington, DC

Bureau of European and Eurasian Affairs, Southern Europe Office Internship

March 2016 – June 2016

- Worked with Foreign Service Officers on Economic Portfolio of Turkey, Greece, and Cyprus including international trade promotion, Cyprus negotiations, environmental issues, and energy infrastructure development

THE WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

Washington, DC

Scholar Research Assistant Internship

Aug. 2015 – Dec. 2015

- Researched International Trade issues with a focus on the Transatlantic Trade and Investment Partnership

CLEARANCES, LANGUAGES AND INTERESTS

Clearance and Languages: Secret (2016); German (Business Proficiency)

Interests: Kayaking; Tennis; Continental Philosophy; German Literature; Film studies

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Alexander Maciej Nowakowski
GUID: 818841441

Course Level: Juris Doctor

Degrees Awarded:

Juris Doctor Jun 08, 2022
Georgetown University Law Center
Major: Law
Honors: Cum Laude

Entering Program:

Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2019							
LAWJ	001	91	Civil Procedure	4.00	B+	13.32	
			Charles Abernathy				
LAWJ	004	13	Constitutional Law I: The Federal System	3.00	B	9.00	
			Susan Bloch				
LAWJ	005	13	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			EunHee Han				
LAWJ	008	91	Torts	4.00	B+	13.32	
			Girardeau Spann				

	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	35.64	3.24
Cumulative	11.00	11.00	35.64	3.24

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2020							
LAWJ	002	12	Contracts	4.00	P	0.00	
			Michael Diamond				
LAWJ	003	91	Criminal Justice	4.00	P	0.00	
			Paul Butler				
LAWJ	005	13	Legal Practice: Writing and Analysis	4.00	P	0.00	
			EunHee Han				
LAWJ	007	91	Property	4.00	P	0.00	
			Michael Gottesman				
LAWJ	1323	50	International Law, National Security, and Human Rights	3.00	P	0.00	
			Milton Regan				
LAWJ	611	13	Questioning Witnesses In and Out of Court	1.00	P	0.00	
			Michael Williams				

Mandatory P/F for Spring 2020 due to COVID19

	EHrs	QHrs	QPts	GPA
Current	20.00	0.00	0.00	0.00
Annual	29.00	11.00	35.64	3.24
Cumulative	31.00	11.00	35.64	3.24

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	1067	05	English Legal History Sem	3.00	A	12.00	
			James Oldham				
LAWJ	1085	05	Sentencing Law and Policy	2.00	A	8.00	
			Mark MacDougall				
LAWJ	121	01	Corporations	4.00	A-	14.68	
			Michael Diamond				
LAWJ	1491	03	Externship I Seminar (J.D. Externship Program)		NG		
			Alexander White				
LAWJ	1491	125	~Seminar	1.00	A	4.00	
			Alexander White				
LAWJ	1491	127	~Fieldwork 3cr	3.00	P	0.00	
			Alexander White				
LAWJ	1654	08	The IMF and the Evolution of International Financial and Monetary Law	3.00	A-	11.01	
			Sean Hagan				

	EHrs	QHrs	QPts	GPA
Current	16.00	13.00	49.69	3.82
Cumulative	47.00	24.00	85.33	3.56

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	1191	08	Sovereign Debt and Financial Stability Seminar	2.00	A	8.00	
			Anna Gelpern				
LAWJ	1492	17	Externship II Seminar (J.D. Externship Program)		NG		
			Joanne Chan				
LAWJ	1492	86	~Seminar	1.00	A	4.00	
			Joanne Chan				
LAWJ	1492	88	~Fieldwork 3cr	3.00	P	0.00	
			Joanne Chan				
LAWJ	165	05	Evidence	4.00	P	0.00	
			Paul Rothstein				
LAWJ	215	07	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
			Jeffrey Shulman				

LAWJ	361	01	Professional Responsibility: The American Legal Profession in the 21st Century: Tech, Markets, & Reg	2.00	A-	7.34	
			Tanina Rostain				

	EHrs	QHrs	QPts	GPA
Current	16.00	9.00	34.02	3.78
Annual	32.00	22.00	83.71	3.81
Cumulative	63.00	33.00	119.35	3.62

-----Continued on Next Page-----

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Alexander Maciej Nowakowski
GUID: 818841441

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2021 -----							
LAWJ	1167	05	Anatomy of a Federal Criminal Trial: The Prosecution and Defense Perspective	2.00	A	8.00	
			Jonathan Lopez				
LAWJ	1527	05	Habeas Corpus Post Conviction Practicum	5.00	A+	21.65	
			Christina Mathieson				
LAWJ	196	05	Free Press	2.00	A	8.00	
			Seth Berlin				
LAWJ	410	05	State and Local Government Law	3.00	A	12.00	
			Sheila Foster				
				EHrs	QHrs	QPts	GPA
Current				12.00	12.00	49.65	4.14
Cumulative				75.00	45.00	169.00	3.76
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2022 -----							
LAWJ	1712	09	Advanced Evidence Seminar	2.00	A-	7.34	
			Michael Pardo				
LAWJ	1756	05	Criminal Law Theory in Context	2.00	A	8.00	
			Rafael Reznick				
LAWJ	178	05	Federal Courts and the Federal System	3.00	P	0.00	
			David Vladeck				
LAWJ	455	97	Federal White Collar Crime	3.00	A-	11.01	
			Mark MacDougall				
----- Transcript Totals -----							
				EHrs	QHrs	QPts	GPA
Current				10.00	7.00	26.35	3.76
Annual				22.00	19.00	76.00	4.00
Cumulative				85.00	52.00	195.35	3.76
----- End of Juris Doctor Record -----							



P.O. Box 4268 Silver Spring MD 20914 | 202.378.0284 | www.habeasinstitute.org

March 2, 2023

Dear Honorable Sir or Madam:

I write to enthusiastically recommend that you consider Alexander Nowakowski for a clerkship. I had the privilege of teaching Alex in the Habeas Corpus Post-Conviction Practicum at Georgetown University Law Center during the Fall 2021. He immediately stood out as bright, insightful, curious, and compassionate.

The Habeas Corpus Post Conviction Practicum consisted of two parts: (1) a weekly seminar in which students were expected to participate in discussions regarding relevant issues; and (2) a four-person team project in which the team represented a real client. Alex's team represented a client who had been convicted and sentenced to life in Georgia for the murder of a prostitute. The client was black, deaf, and merely visiting the Atlanta area as a New York resident when he was arrested.

Alex drafted several thorough, well-researched memoranda of law for the case regarding trial counsel's failure to object to evidence of prior bad acts. Alex first identified the issue on his own after reviewing the trial transcript. He was so troubled by defense counsel's egregious failure to object that he led the team in investigating evidence to support a claim that defense counsel was constitutionally ineffective. The investigation included reviewing police reports and interviewing lay witnesses who provided compelling vignettes that shed light on the truth behind the situation.

In addition to the multiple legal memoranda that Alex drafted about the prior bad acts and defense counsel's ineffectiveness and the investigation, Alex also drafted an argument in support of a hypothetical case involving a petition for habeas relief in the federal courts. Each student in the class was expected to grapple with issues of procedural default and how to present a claim under the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254. Alex's argument that the claim was not procedurally defaulted was nuanced and demonstrated a legal understanding well beyond his age and experience. It exceeded strong legal arguments we have reviewed from our experienced capital defender colleagues. Quite frankly, my co-professor and I were blown away.

The typical clerk characteristics of attention to detail and outstanding writing skills certainly apply to Alex. Alex also brings curiosity, compassion, and brilliant legal understanding. He is perfectly suited for a clerkship, and I cannot recommend him highly enough. Please feel free to contact me directly at cmathieson@habeasinstitute.org if you have any questions.

Thank you,

Christina Mathieson

ALLEN & OVERY

Allen & Overy LLP

1101 New York Avenue, NW
Washington, DC 20005

Tel +1 202 683 3800
Fax +1 202 683 3999
Direct line 2026833888
Mobile 3104972514
jonathan.lopez@allenoverly.com

September 27, 2022

Re: Alexander Nowakowski - Letter of Recommendation

To Whom It May Concern,

I am writing in support of Alexander Nowakowski in connection with his application for a federal judicial clerkship. Mr. Nowakowski is inquisitive, intelligent, and hard-working and I recommend him without reservation.

I met Mr. Nowakowski in the fall of 2021 through a trial strategy course I teach at the Georgetown University Law Center as an Adjunct Professor. The course is loosely based on an Enron case I prosecuted at trial and is co-taught with the defense counsel from that trial. The course is designed to be an in-depth analysis of all stages of a white-collar federal criminal investigation and trial – using the Enron case as the hypothetical backdrop to guide the discussion.

Mr. Nowakowski stood out in the class not only because of his work product, but also because of his insightful and thought provoking class participation. Mr. Nowakowski was a consistent and active participant in class discussion and demonstrated through his many contributions that he had not only digested the materials for that particular class, but had also thought about how the materials tied into previous discussions. Mr. Nowakowski's comments often sparked further discussion amongst his classmates and helped us as adjunct professors create a more interesting learning environment.

Based on my knowledge and experience of Mr. Nowakowski, I fully support his candidacy for a clerkship. I have no doubt that his dedication to the task and his ability to decipher, synthesize, and apply legal concepts will be of great benefit to him and his co-workers in whatever setting he finds himself in next. If you have any questions regarding Mr. Nowakowski, please do not hesitate to call me at (310) 497-2514.

Sincerely,



Jonathan E. Lopez
Adjunct Professor
Georgetown University Law Center

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May 21, 2023

The Honorable Kiyo Matsumoto
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Dear Judge Matsumoto:

I am writing to offer my highest recommendation in support of Alex Nowakowski's application for a judicial clerkship in your chambers. Alex worked as an intern for approximately seven months under my supervision in the chambers of Judge Kiyo Matsumoto in the Eastern District of New York. During that time, he demonstrated both the legal skill and temperament that would be required of an outstanding district court law clerk.

In Judge Matsumoto's chambers, we typically assign our interns the first drafts of opinions in social security appeals and habeas cases, but Alex quickly demonstrated the ability to work on more challenging cases. My co-clerks and I asked Alex to complete first drafts that were often some of our most difficult, including:

- An opinion to resolve a motion to de-certify a class and a cross-motion to amend the complaint in an FLSA case, shortly after the Second Circuit issued a decision clarifying the meaning of "similarly situated" plaintiffs, which required a novel analysis for purposes of the opinion;
- Findings of fact in a contract dispute with a lengthy procedural history; and
- Several opinions resolving unique habeas petitions, including ones brought by counsel, or by federal defendants pursuant to 28 U.S.C. § 2255.

Alex's most impressive work may have been a draft to resolve a First Step Act motion, in which a federal defendant sought a sentence reduction on several counts of conviction. The defendant was eligible for a sentence reduction on certain of his convictions, but the Second Circuit had not yet addressed whether his other convictions were eligible. Alex performed diligent research, and identified cases on point that the parties had not cited. Alex's draft grappled with all of the issues in a thoughtful way, and he turned in a polished first draft.

Alex's excellent work resulted in our decision to invite him to continue his internship through the fall of 2020, after he was initially hired for only the summer. He was an invaluable member of Judge Matsumoto's chambers, and I believe that he would be an outstanding law clerk.

Please let me know if I can provide any further information. I can be reached at (330) 416-1535 or michael.r.mayer@aexp.com.

Sincerely,

Michael Mayer

Michael Mayer - michael_mayer@nyed.uscourts.gov - (330) 416-1535

Alexander Nowakowski
12 Kensington Ct, Princeton, NJ 08540
(570) 814-7164; amn114@georgetown.edu

Writing Sample

The attached writing sample is an excerpted Memorandum & Order in response to a First Step Act motion for a prisoner in federal custody within the Eastern District of New York. The defendant sought a sentence reduction for his narcotics distribution conspiracy conviction, and critically, his murder in the aid of racketeering conviction. The analysis below considers the defendant's eligibility for a sentence reduction under the First Step Act. This draft is solely my unedited work product. Judge Kiyo A. Matsumoto's chambers has granted permission for this draft to be used as a writing sample.

Legal Standard

The United States Sentencing Commission issued four reports to Congress explaining that the ratio of 100 to 1 for crack-to-powder was too high and unjustified because sentences embodying this ratio "could not achieve the Sentencing Reform Act's 'uniformity' goal of treating like offenders alike, because they could not achieve the 'proportionality' goal of treating different offenders . . . differently, and because the public had come to understand sentences embodying the 100-to-1 ratio as reflecting unjustified race based differences." *Dorsey v. United States*, 567 U.S. 260, 268 (2012) (citing *Kimbrough v. United States*, 552 U.S. 85, 97-98 (2007)). In response, Congress enacted the Fair Sentencing Act into law increasing "the drug amounts triggering mandatory minimums for crack trafficking offense from 5 grams to 28 grams in respect to the 5-year minimum and from 50 grams to 280 grams in respect to the

10-year minimum (while leaving powder at 500 grams and 5,000 grams respectively.)” *Id.* at 269.

“The First Step Act of 2018 ‘made retroactive the crack cocaine minimums in the Fair Sentencing Act.’” *United States v. Williams*, No. 03-CR-1334 (JPO), 2019 WL 2865226, at *2 (S.D.N.Y. July 3, 2019) (quoting *United states v. Rose*, No. 03-CR-1501, 2019 WL 2314479, at *2 (S.D.N.Y. May 24, 2019)). Section 404(b) of the First Step Act of 2018 states that “[a] court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed.” Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018); see also *United States v. Holloway*, 956 F.3d 660, 664 (2d Cir. 2020). A “covered offense” is defined as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.” *Id.* § 404(a).

Further, “[r]elief under the First Step Act is discretionary,” though “Section 404(c) places two limits on the court’s resentencing power.” *United States v. Simmons*, 375 F. Supp. 3d 379, 386 (E.D.N.Y. 2019). Section 404(c) states:

LIMITATIONS.- No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.

Pub. L. No. 115-391, § 404(c), 132 Stat. 5194, 5222 (2018).

In reviewing a motion for relief pursuant to the First Step Act, the court must first consider whether the defendant is eligible for a reduction in sentence and, if eligible, consider if such relief is warranted under the particular circumstances of the case “consider[ing] all the applicable factors under 18 U.S.C. § 3553(a), as well as defendant's post-sentencing conduct while in prison.” *United States v. Williams*, No. 03-CR-795 (SJF), 2019 WL 3842597, at *4 (E.D.N.Y. Aug. 15, 2019) (collecting cases). “[T]he Second Circuit has cautioned that ‘many defendants who are eligible for Section 404 relief may receive no substantial relief at all’ [because] ‘Section 404 relief is discretionary, after all, and a district judge may exercise that discretion and deny relief where appropriate.’” *United States v. Aller*, -- F. Supp. 3d --, 2020 WL 5494622 (S.D.N.Y. Sept. 11, 2020) (quoting *United States v. Johnson*, 961 F.3d at 191).

Discussion

Defendant moves for a modification of his sentence pursuant to the First Step Act regarding his conviction for engaging in narcotics distribution conspiracy, Count Forty-Seven; and murder in aid of racketeering, Count Eight. (See *generally* Mem.) The parties agree that defendant is eligible for a modification of his sentence regarding Count Forty-Seven, however the government opposes a sentence reduction regarding defendant's conviction for murder in aid of racketeering.

I. Eligibility

First, there is no question that defendant's narcotics distribution conspiracy conviction is a covered offense. The government "agrees that [defendant's] narcotics distribution conspiracy conviction is a 'covered offense' under the First Step Act . . . [b]ecause the statutory penalties for Section 841(b)(1)(A) [charged under Count Forty-Seven] were modified by Section Three of the Fair Sentencing Act" (Opp. at 5.) In finding that narcotics distribution conspiracy was a "'covered offense' within the meaning of Section 404(a)," the Second Circuit explained that "Section 2 of the Fair Sentencing Act modified the statutory penalties associated with a violation of those provisions by increasing Section 841(b)(1)(A)(iii)'s quantity threshold from 50 to 280 grams" and, "Section 2 thus modified - in the past tense - the penalties for [defendant's]

statutory offense” *United States v. Johnson*, 961 F.3d 181, 190-91 (2d Cir. 2020); *see also United States v. Martin*, 974 F.3d 124, 133 (2d Cir. 2020); *United States v. Burrell*, No. 97 CR 988-1 (RJD), 2020 WL 5014783, at *4 (E.D.N.Y. Aug. 25, 2020).

As defendant is unquestionably eligible for relief regarding his narcotics distribution conspiracy conviction, the court turns to defendant’s murder in the aid of racketeering conviction. Here, the government sets forth its main challenge to defendant’s First Step Act relief by stating “there is no legal or factual basis that warrants resentencing” as “[m]urder is not a covered offense.” (Opp. 5.) In support, the government cites to *United States v. Barnett*, No. 90-cr-0913(LAP, No. 19-cv-0132(LAP), 2020 WL 137162, at *4-5 (S.D.N.Y. Jan. 13, 2020),¹ and *United States v. Potts*, 389 F. Supp. 3d 352, 355-56 (E.D.Pa. 2019), to state that murder in the aid of racketeering pursuant to 18 U.S.C. § 1959(a)(1) is not a “covered offense.” (*Id.*) Defendant asserts, however, that *United States v. Jones*, No. 3:99-cr-264-6(VAB), 2019 WL 4933578,

¹ The *Barnett* district court states “that [defendant] is eligible for a sentence reduction on Count Three [possession with intent to distribute cocaine-base in violation of 21 U.S.C. § 841(b)(1)(C)] but is not eligible on Count One [conspiracy to distribute narcotics in violation of 21 U.S.C. § 846]” and that “any reduction of sentence would be purely academic because [defendant] remains subject to a life sentence on Count One.” *Barnett*, 2020 WL 137162, at *4-5. This court does not find the reasoning of *Barnett* persuasive in light of *Johnson*’s discussion of 21 U.S.C. § 846 eligibility in rejecting the government’s proposed limitations in reading the First Step Act. *Johnson*, 961 F.3d at 190 n.6.

(D. Conn. Oct. 7, 2019), and *United States v. Powell*, No.3:99-cr-264-18(VAB), 2019 WL 4889112, (D. Conn. 2019), provide for eligibility as the “individual life sentences for Racketeering and crack cocaine distribution . . . flowed from a single offense level and a single sentence guideline determination.” (Mem. 16.)

In *United States v. Powell*, the defendant had been convicted of racketeering offenses, conspiracy to distribute cocaine base, obstruction of justice and witness tampering, and conspiracy to commit money laundering. 2019 WL 4889112, at *1. The *Powell* court found that because the defendant had been convicted of a “covered offense,” the narcotics distribution conspiracy in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), and 846, that the defendant was eligible for resentencing of his entire sentence because the racketeering offenses are “premised on violations of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).” *Id.* at 5. The *Powell* court further stated that the “RICO, RICO Conspiracy, obstruction of justice and witness tampering, and conspiracy to commit money laundering convictions thus were all addressed together, with the crack cocaine violation, as part of a single sentencing package, as inextricably related offenses.” *Id.* at *8. (citing *United States v. Triestman*, 178 F.3d 624, 630 (2d Cir. 1999)). Under the same logic, the *Powell* court found that the defendant in *United States v. Jones*, who had been convicted

of racketeering offenses and conspiracy to distribute to heroin and cocaine base in violation, was eligible for First Step Act relief. 2019 WL 4933578, at *4-5.

One court in the Eastern District of Michigan has characterized the *Powell* court's reasoning as the "one qualifies all" approach and has rejected its conclusions because a "bedrock principle of post-conviction procedure is that 'a district court may modify a defendant's sentence only as provided by statute.'" *United States v. Smith*, No. 04-90857, 2020 WL 3790370, at *10 (E.D. Mich. July 7, 2020) (quoting *United States v. Johnson*, 564 F.3d 419, 421 (6th Cir. 2009)) (brackets omitted). "Plainly, [Section 404(b)] indicates that the Court may only impose reduced sentence for a covered offense" and "[a]t the very least, Sec.404(b) does not *expressly permit* the Court reduce a sentence for a non-covered offense" while in contravention of "well-defined limits" placed on the power of a district court to modify a sentence "*Powell* assumed the court could reduce a sentence for a covered offense because Sec.404(b) did not *expressly prohibit* such a reduction." *Id.* (emphasis in original). Therefore, the *Smith* court found that the defendant was eligible and deserving of relief for the "covered offenses," but that the "First Step Act does not allow sentence reductions for non-covered offenses, such as [defendant's] continuing criminal enterprise conviction under §

848(a)” because, *inter alia*, the First Step Act must be read in conjunction with 18 U.S.C § 3582(c)(1)(B). *Id.* at *13.

While not cited by the parties, this court finds a recent decision within the Eastern District of New York taking issue with *Smith’s* conclusion that the continuing criminal enterprise conviction (“CCE”) was not a covered offense to be persuasive to the extent that it provides the appropriate approach for considering eligibility. In *United States v. Burrell*, the defendant had been convicted of engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(a) and moved pursuant to § 404 for First Step Act relief. 2020 WL 5014783, at *1. In *Johnson*, the Second Circuit explained that “it is the statute under which a defendant was convicted, not the defendant’s actual conduct, that determine whether a defendant was sentenced for a ‘covered offense’ within the meaning of Section 404(a).” 961 F.3d at 187. In light of the Second Circuit’s decision in *Johnson*, the *Burrell* court reasoned that the “‘covered offense’” discussion take place entirely *at the statutory level*” and, “[i]n this respect, CCE under § 848(a) and (c) is no less incomplete, or unconsummated, in ‘describing a statutory offense’ (to borrow *Johnson’s* vocabulary) than the conspiracy statute.” *Burrell*, 2020 WL 5014783, at *7. “The ‘statutory offense’ known as CCE *can only* be fully stated by the interaction of Section 848 (a) and, in

the language of 848(c), the ‘provision’ of subchapter I or II of Title 21 that the defendant is charged with having continuously violated” and “one or more additional statutes must be part of identification of the statutory offense.” *Id.* (emphasis added).

Further, *Burell* criticizes *Smith*’s conclusion that the CCE offense was not a covered offense because it required additional elements for a conviction even though the *Smith* court recognized that the jury must have concluded that the defendant violated § 841(a)(1) and § 846.² *Id.* at *6 (citing *Smith*, 2020 WL 3790370, at *12). The *Burell* court explains that its interlocking approach recognizes both the “practical” understanding of the manner in which cases are charged while fulfilling the “eligibility-expanding” guidance from the Second Circuit in discussing the conviction of covered offenses at the statutory level as a rejection of the government’s arguments that the court should limit relief based on “actual conduct.” *Id.* at 7-8 (emphasis in original).

This solution deftly threads the needle. Rather than focusing on the underlying conduct disavowed by the Second Circuit, *Burell*’s focus on the interaction of the statutes emphasizes that the CCE conviction is incomplete without the

² While the *Smith* court rejects the “underlying criminal conduct” approach, it appears to have considered that the defendant’s enterprise dealt in both crack and powder cocaine to distinguish its reasoning from *United States v. Hall*, No. 2:93-cr-162(1), (E.D.Va. Mar. 2, 2020), in which that defendant dealt only in crack cocaine. *Smith*, 2020 WLE 3790370, at *13.

statutes that have been modified by the Fair Sentencing Act, 21 U.S.C. 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846, and therefore any modification to these statutes' penalties modifies the CCE conviction. Therefore, unlike *Powell's* "one qualifies all" approach, *Burrell's* interlocking approach does not require consideration of any other conviction within a "sentencing package," *Powell*, 2019 WL 4889112, at *8, and determines on the statute alone if a sentence should be considered a covered offense pursuant to Section 404.³

Further, this reasoning, as opposed to the *Powell* court's "one-qualifies all" approach, is in line with the Second Circuit's recent decision in *United States v. Martin*. 974 F.3d 124 (2d Cir. 2020). In deciding if a defendant could receive a benefit for a "covered offense" already served for his subsequent convictions while in prison, the Second Circuit clarified that "[t]he explicit reference to sections 2 or 3 of the Fair Sentencing Act demonstrates that the First Step Act permits a sentencing reduction *only* to the extent that section 2 or 3 of the Fair Sentencing Act would apply" meaning that the "First Step Act permits a sentencing modification only to the extent the Fair Sentencing Act would have changed the

³ The *Burrell* court explains that "to state that relation [between CCE and the violations of a covered statutory offense] does not dispose of the objection that CCE nevertheless remains a freestanding statute with its own penalty provision and that the narcotics conspiracy is 'underlying conduct' that *Johnson* says I am not to consider." *Burrell*, 2020 WL 5014783, at *5.

defendant's 'covered offense' sentence." *Id.* at 138 (emphasis in original). "[C]ourts require specific modification authorization - either due to a change in the guidelines ranges for a sentence on a particular count of conviction, or because a statute authorizes the reduction of a sentence - for each term of imprisonment contained in an otherwise final judgment of conviction." *Id.* at 137 (emphasis in original). Thus, the *Burrell* approach allows for modification of a sentence that can only be fully stated by its interaction with a "covered offense," without improperly considering those non-covered offenses that are not each subject to "specific modification authorization." *Id.*

Defendant cites to a recent Seventh Circuit decision, *United States v. Hudson*, 967 F.3d 605 (7th Cir. 2020), that has taken the "one qualifies" all approach and made clear that a defendant is eligible for First Step Act relief for non-covered offenses if he is convicted of any covered offense. (Mem. 17.) In reading Section 404(c) of the First Step Act, the Seventh Circuit states "[i]f Congress intended the Act not to apply when a covered offense is grouped with a non-covered offense, it could have included that language."⁴ *Hudson*, 967 F.3d at 610-11.

⁴ The Seventh Circuit finds further support for its approach from two Fourth Circuit decisions - *United States v. Gravatt*, 953 F.3d 258, 264 (4th Cir. 2020), and *United States v. Venable*, 943 F.3d 187, 193 (4th Cir. 2019). See *Hudson*, 967 F.3d at 610.

However, the Second Circuit has emphasized that 3852(c) must be read in conjunction with the First Step Act, which allows only those sentence modifications that are *expressly permitted*. See *Holloway*, 956 F.3d at 666 ("But a First Step Act motion is based on the Act's own explicit statutory authorization, rather than on any action of the Sentencing Commission. For this reason, such a motion falls within the scope of § 3582(c)(1)(B), which provides that a 'court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute.'"); see also *Martin*, 974 F.3d at 135-37.

Therefore, in applying the *Burrell* approach, this court does not find that it has the authority to modify defendant's murder in the aid of racketeering conviction as it can not be read as a covered offense pursuant to Section 404.

18 U.S.C. Section 1959 states:

- (a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—
 - (1) for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years

or for life, or a fine under this title, or both;
. . .

18 U.S.C. § 1959. Murder in the aid of racketeering does not require interaction with any covered offense “to be fully stated.” *Burrell*, 2020 WL 5014783, at *7. While dealing in controlled substances is one of the multiple crimes that may define a racketeering activity, this predicate applies to the “enterprise that engaged in racketeering activity,” e.g. the drug gang, and not the defendant convicted under the statute. 18 U.S.C. § 1959. To find that the underlying conduct of the Mora organization’s dealing of crack cocaine as an interlocking component to the murder in aid of racketeering offense does not serve the purposes the Fair Sentencing Act.

In *Johnson*, the Second Circuit discussed the government’s anxiety that “if Section 404 eligibility turns on whether a defendant was sentence for violating a certain type of ‘Federal criminal statute,’ that [it] would lead to the *improbably broad* result that any defendant sentenced for violating Section 841(a), or even the Controlled Substances Act, would be eligible, because these could be understood as ‘statutes’ whose penalties were modified by Section 2 and 3 of the Fair Sentencing Act.” 961 F.3d at 190 n.6. The Second Circuit stated that its analysis in the present case applied to

the 21 U.S.C. § 841(b)(1)(A)(iii), implying that it would not support such a broad approach. *Id.*

Thus, for the foregoing reasons, defendant is not eligible for relief pursuant to Section 404 in respect to his murder in the aid of racketeering conviction pursuant to U.S.C. § 1959(a)(1).

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Writing Sample

The attached writing sample is an Opinion and Order in response to a motion to quash a search warrant that was issued under the Stored Communications Act and Federal Rule of Criminal Procedure 41. The Opinion and Order was drafted for the chambers of the Hon. Kimberly Priest Johnson, U.S. Magistrate Judge, and has been approved as a writing sample. The movant's name and all identifying information have been removed.

REDACTED AMENDED OPINION AND ORDER

Pending before the Court is Movant’s Motion to Quash Search and Seizure Warrant (the “Motion”) (Dkt. 3), wherein Movant seeks to quash the search warrant issued as to his personal email address.¹ *See id.* at 1. The Government filed a response (Dkt. 4) opposing the Motion (Dkt. 3), and Movant filed a reply (Dkt. 5). Upon consideration, the Motion (Dkt. 3) is hereby **DENIED**.

I. BACKGROUND

On April 24, 2023, the Government filed an application and affidavit in support of a search warrant (the “Search Warrant Application and Affidavit”) (Dkt. 1), requesting information associated with two email accounts, a personal email address and a professional email address, both of which are stored at premises controlled by Google, Inc. (“Google”), and are related to allegations that Movant committed violations of 18 U.S.C. § 1343 (Wire Fraud). *See id.* at 2–3. In the Affidavit (Dkt. 1), the Federal Bureau of Investigation Agent swears there is probable cause to believe Movant committed wire fraud. *See id.* at 4. The Agent further swears Movant communicated using the email addresses with others regarding alleged unlawful expenses and in relation to different allegedly unlawful transactions. *See id.* at 4–8.

On April 24, 2023, a search and seizure warrant was issued as to Movant’s personal email address pursuant to Rule 41 of the Federal Rules of Criminal Procedure and 18 U.S.C. § 2703 (the “Search Warrant”) (Dkt. 2).² Attachment A to the Search Warrant (Dkt. 2) states that the property to be searched applies to information associated with the personal email address, which is stored

¹ This Opinion and Order, although filed in a sealed case, will be made publicly available. Identifying information and sealed information has been redacted and, as noted in the Opinion and Order, Movant is already aware of the existence of the Search Warrant (Dkt. 2).

² The Search Warrant Application and Affidavit (Dkt. 1) additionally requests a search of another email address—the professional email address. *See id.* at 2. Movant does not move to quash the Search Warrant (Dkt. 2) as to the professional email address and, therefore, the Court does not analyze the Search Warrant (Dkt. 2) in relation to this email address.

at premises controlled by Google. *See id.* at 3. Section I of Attachment B to the Search Warrant (Dkt. 2) sets forth information to be disclosed by Google, and Section II sets forth information to be seized by the Government. *See id.* at 4–6. Specifically, Section II states in relevant part:

All information described above in Section I that constitutes evidence, fruits, and instrumentalities of violations of Title 18 United States Code Sections 1343, those violations involving [Movant], and others occurring on or after July 31, 2018, and on or before April 17, 2023, including for each email account or identifier listed in Attachment A pertaining to the following matters:

Id. at 5–6. Following the colon, the Search Warrant (Dkt. 2) sets forth four different subject matter categories

On May 3, 2023, Google informed Movant of the Search Warrant (Dkt. 2). *See* Dkt. 3 at 1–2. On May 5, 2023, Movant filed the Motion (Dkt. 3) asserting he has an objectively reasonable expectation of privacy in his Google email account and, as such, his Google email account is protected by the Fourth Amendment and the Stored Communications Act, 18 U.S.C. § 2701 *et. seq.* (the “Stored Communications Act” or “SCA”). *See* Dkt. 3 at 2. Movant further asserts his Google email account contains privileged information, including attorney-client information. *See id.* at 1. Movant argues the Search Warrant (Dkt. 2) is an “impermissible general warrant” and the Search Warrant (Dkt. 2) is not saved by the scope of the Affidavit (Dkt. 1) because the Search Warrant (Dkt. 2) does not incorporate the Affidavit (Dkt. 1). Dkt. 3 at 4.

On May 19, 2023, the Government filed its response (Dkt. 4), wherein the Government represents that Google’s processing of the Search Warrant (Dkt. 2) has been suspended until the Motion (Dkt. 3) is resolved. *See* Dkt. 4 at 1. The Government argues Movant does not have standing to challenge the Search Warrant (Dkt. 2) before its execution. *See* Dkt. 4 at 1–4 (citing *In Re the Search of Information Associated With One Account Stored At the Premises Controlled by Facebook, Inc.*, No. 21-SC-1386 (GMH), 2021 WL 2302800, at *2–3 (D.D.C. June 4, 2021)). On

May 23, 2023, Movant filed a reply (Dkt. 5), wherein Movant asserts he has standing to challenge the Search Warrant (Dkt. 2) under the Fourth Amendment. *See* Dkt. 5 at 1–4.

II. LEGAL ANALYSIS

The Stored Communications Act governs the privacy of stored communications in the United States and, *inter alia*, “permits a governmental entity to compel a service provider to disclose customer communications or records in certain circumstances.” *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 250 (5th Cir. 2017) (citing 18 U.S.C. § 2703). Under the SCA, there are three methods for the Government to request electronic information: (1) “a warrant issued using the procedures described in the Federal Rules of Criminal Procedure,” 18 U.S.C. § 2703(a), (b)(1)(A), (c)(1)(A); (2) a “court order for disclosure” issued based on the Government’s offer of “specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation,” *id.* § 2703(d); and (3) “an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena,” *id.* § 2703(b)(1)(B)(i), (c)(2).

In the present case, the Government requested a search warrant pursuant to Rule 41 of the Federal Rules of Civil Procedure. Movant challenges the Search Warrant (Dkt. 2) on the basis that it is a “general warrant”, Dkt. 3 at 4, and the Government responds that Movant does not have standing, *see* Dkt. 4 at 1–4. Movant filed a reply, contending he has standing to file a motion to quash under the Fourth Amendment, and that he has a “right to refuse” entry. *See* Dkt. 5 at 1–5.

The SCA grants only the provider of electronic communication services or remote computing services—not the subscriber or customer—the statutory right to file a motion to quash a search warrant. *See* 18 U.S.C. § 2703(h)(2) (“A provider of electronic communication service to

the public or remote computing service, including a foreign electronic communication service or remote computing service, that is being required to disclose pursuant to legal process issued under this section the contents of a wire or electronic communication of a subscriber or customer, may file a motion to modify or quash the legal process”). The lack of a statutory right afforded to subscribers and customers to challenge a search warrant before it is executed is further evidenced in that the SCA allows the Government to execute a search warrant “without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure.” *Id.* § 2703(b)(1)(A); *see also id.* § 2703(c)(3) (“A governmental entity receiving records under this subsection is not required to provide notice to a subscriber or customer.”). “Thus, it is only the provider who is subject to the *search* and to whom notice . . . is due” and, as there is no meaningful interference with any possessory interests, “there is no *seizure* of ‘tangible property [or] wire communication’” *In re Monitoring of Glob. Positioning Sys. Info.*, No. 22-SC-764 (ZMF), 2022 WL 17817748, at *5–6 (D.D.C. Dec. 20, 2022) (citations omitted) (emphasis in original); *see also In re Application of U.S. for Search Warrant for Contents of Electronic Mail and for Ord. Directing Provider of Electronic Commc’n Servs. to not Disclose Existence of Search Warrant*, 665 F. Supp. 2d 1210, 1224 (D. Or. 2009) (“Much of the reluctance to apply traditional notions of third party disclosure to the e-mail context seems to stem from a fundamental misunderstanding of the lack of privacy we all have in our e-mails. Some people seem to think that they are as private as letters, phone calls, or journal entries. The blunt fact is, they are not.”). Accordingly, if notice need not be provided to the subscriber or customer, it must stand that the SCA does not grant Movant a right to move to quash the Search Warrant (Dkt. 2). *See In re Search of Recs., Info., & Data Associated with 14 Email Addresses Controlled by Google, LLC*, 438 F. Supp. 3d 771, 774 (E.D. Mich. 2020)

(internal quotations omitted) (“The design and plain language of the SCA is clear that obtaining electronic evidence via a subpoena, which requires no judicial finding, must also include notice to the subscriber. Conversely, because a warrant requires a finding of probable cause by a neutral judicial officer, no notice is required prior to the warrant’s execution.”).

Additionally, as a court in the Eastern District of Pennsylvania explained, “granting standing to subjects of SCA warrants to intervene would undercut Congress’ goals in passing the [SCA]” as it would “turn[] the swift execution of warrants into protracted legal battles that would prevent the Government from timely resolving its investigations.” *United States v. Info. Associated with Email Acct. (Warrant)*, 449 F. Supp. 3d 469, 475–76 (E.D. Pa. 2020) (citing *In re Search of Information Associated with Facebook Accounts DisruptJ20, Lacymacauley, and Legba. Carrefour that is Stored at Premises Controlled by Facebook, Inc.*, No. 17 CSW 658, 2017 WL 5502809, at *9 (D.C. Super. Nov. 09, 2017)). Thus, policy considerations also weigh against finding that Movant has standing under the SCA to challenge the Search Warrant (Dkt. 2) *ex ante*. For these reasons, the Court finds that Movant does not have standing under the SCA to file a motion to quash the Search Warrant (Dkt. 2).

Furthermore, Movant does not have standing under the Fourth Amendment to file a motion to quash the Search Warrant (Dkt. 2). The Supreme Court has instructed courts that “[t]he Constitution protects property owners not by giving them license to engage the police in a debate over the basis for the warrant, but by interposing, *ex ante*, the ‘deliberate, impartial judgment of a judicial officer . . . between the citizen and the police,’ and by providing, *ex post*, a right to suppress evidence improperly obtained and a cause of action for damages.” *United States v. Grubbs*, 547 U.S. 90, 99 (2006) (quoting *Wong Sun v. United States*, 371 U.S. 471, 481–82 (1963)). In reliance on this language, courts have “concluded that the Fourth Amendment does not provide a chance

to litigate the validity of a warrant before that warrant has been executed by the government.” *In re Search of Recs., Info., & Data Associated with 14 Email Addresses Controlled by Google, LLC*, 438 F. Supp. 3d at 776 (internal quotations omitted); *see also Info. Associated with Email Acct. (Warrant)*, 449 F. Supp. 3d at 475–76 (finding the movant did not have standing to challenge *ex ante* search warrant under the SCA); *In re Search of Info. Associated With One Acct. Stored at Premises Controlled by Facebook, Inc.*, No. 21-SC-1386 (GMH), 2021 WL 2302800, at *2 (D.D.C. June 4, 2021) (collecting cases) (explaining “courts have found that account owners lack standing to challenge search warrants issued to electronic communications services under the Stored Communications Act prior to their execution . . .”).

Although Movant asserts *Facebook*’s reliance on the above language in *Grubbs* was improper, *Grubbs* made clear that “neither the Fourth Amendment nor Federal Rule of Criminal Procedure 41” requires “the executing officer [to] present the property owner with a copy of the warrant before conducting his search.” *Grubbs*, 547 U.S. at 98–99; *accord Schanzle v. Haberman*, 831 F. App’x 103, 106 (5th Cir. 2020) (per curiam) (“In any event, as our sister circuits have concluded, we could not recognize [a Fourth Amendment right to obtain warrant attachments] after the Supreme Court decided [*Grubbs*].”) (citations omitted). The right to file a motion to quash a search warrant presupposes a right to notice before the execution of the search warrant. Because the Fourth Amendment does not require the Government provide the Search Warrant (Dkt. 2) to Movant before the execution of the search, Movant does not have standing to challenge the search *ex ante*.

Movant does not address the lack of a constitutional *ex ante* notice requirement, but rather asserts he has standing to exercise his “right to refuse entry” by filing a motion to quash. Dkt. 5 at

4. But Movant’s argument is misplaced.³ Even if the Fourth Amendment mandated that Movant be provided notice of the Search Warrant (Dkt. 2), the Constitution does not provide Movant an *ex ante* bulwark to stop the execution of the Search Warrant (Dkt. 2). *See United States v. Wright*, 777 F.3d 635, 641 (3d Cir. 2015) (“Even if the list of items to be seized had been present at the scene, the agents would have collected precisely the same evidence, and [the defendant] *would have been unable to stop them.*”) (emphasis added). Accordingly, Movant does not have either a statutory or constitutional license to engage the Government *ex ante* in a debate over the basis for the Search Warrant (Dkt. 2); rather, Movant’s protection at this juncture lies with the “‘deliberate, impartial judgment of [the judicial officer]’” *Grubbs*, 547 U.S. at 99 (quoting *Wong Sun*, 371 U.S. at 481–82).

Once a warrant under the SCA is issued, Movant is not left without recourse. *See Doe v. Off. of Kan. Secs. Comm’r*, No. 2:17-CV-2510-JAR-JPO, 2017 WL 5517524, at *6 (D. Kan. Nov. 17, 2017) (“The fact that the SCA does not provide a means for a customer to move to quash a search warrant does not mean that an SCA search warrant is not subject to judicial review.”). Movant retains the option of *ex post* filing a motion to suppress evidence if he believes the Search Warrant (Dkt. 2) was issued without probable cause or the Government’s conduct was unconstitutional. *See Info. Associated with Email Acct. (Warrant)*, 449 F. Supp. 3d at 475.

³ The discussion in *Wong Sun*, the case on which Movant principally relies, referred to 18 U.S.C. § 3109, which reads: “The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.” *See Wong Sun*, 371 U.S. at 482. Even if 18 U.S.C. § 3109 could be analogized to the present case—a search of Movant’s emails possessed by third-party Google—the Fifth Circuit has made clear that suppression is not a remedy for such a violation; rather, the remedy is damages. *See United States v. Bruno*, 487 F.3d 304, 306 (5th Cir. 2007) (quoting *Hudson v. Michigan*, 547 U.S. 586, 589 (2006)); *United States v. Bryant*, No. 21-60960, 2023 WL 119634 (5th Cir. Jan. 6, 2023), *cert. denied*, No. 22-7217, 2023 WL 3158456 (U.S. May 1, 2023) (citing *Bruno*, 487 F.3d at 305–06). This further underscores that Movant’s remedies for any alleged violation must be raised after the execution of the Search Warrant (Dkt. 2)—not before.

Finally, as to Movant’s concerns regarding privileged materials, the Court similarly finds such a challenge may readily be made *ex post* if Movant has reason to believe a violation has occurred. *See United States v. Webster*, 750 F.2d 307, 318 (5th Cir. 1984) (“‘[T]he specificity required by the Fourth Amendment does not generally extend to the means by which warrants are executed’; rather, ‘the manner in which a warrant is executed is subject to later judicial review.’”) (quoting *Dalia v. United States*, 441 U.S. 238, 257–58 (1979)); *see also In re a Warrant for All Content & Other Info. Associated with the Email Acct. xxxxxxxx gmail.com Maintained at Premises Controlled By Google, Inc.*, 33 F. Supp. 3d 386, 396–97 (S.D.N.Y. 2014), *as amended* (Aug. 7, 2014) (same).

III. CONCLUSION

For the foregoing reasons, the Motion (Dkt. 3) is **DENIED**.

Applicant Details

First Name	Kyle
Middle Initial	M
Last Name	Oefelein
Citizenship Status	U. S. Citizen
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Contact Phone Number	9497288193

Applicant Education

BA/BS From	Cornell University
Date of BA/BS	May 2018
JD/LLB From	Columbia University School of Law
	http://www.law.columbia.edu
Date of JD/LLB	May 21, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Native American Law Students Association

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 7, 2023

The Honorable Kiyo Matsumoto
United States District Court
Eastern District of New York
Theodore Roosevelt United States Courthouse
225 Cadman Plaza East, Room 905 S
Brooklyn, NY 11201-1818

Dear Judge Matsumoto:

I am a rising 3L at Columbia Law School, a James Kent Scholar, and a Managing Editor of the *Columbia Law Review*. I write to apply for a clerkship in your chambers for the 2025-2026 term or any term thereafter.

Enclosed please find a resume, unofficial transcript, and writing sample. If needed, I will provide an official transcript once available. Also enclosed are letters of recommendation from Professors Sarah Seo (212 854-4779, sarah.seo@law.columbia.edu), Zohar Goshen (212 854-9760, zohar.goshen@law.columbia.edu), Ronald Mann (212 854-1570, rmann@law.columbia.edu), and Thomas Merrill (212 854-9764, tmerri@law.columbia.edu). Additionally, Professor Richman (212 854-9370, drichm@law.columbia.edu) has agreed to serve as a reference.

Thank you for your consideration. Please do not hesitate to contact me should you need any additional information.

Respectfully,



Kyle Oefelein

KYLE MARY OEFELEIN

212 W. 104th St., Apt. 1D, New York, NY 10025 • (949) 728-8193 • kmo2152@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D. expected May 2024

Honors: James Kent Scholar (for outstanding academic achievement)

Activities: *Columbia Law Review*, Managing Editor
Criminal Law Teaching Assistant to Professor Seo (Spring 2023)
Native American Law Students Association Moot Court, External Team
Spring Break Caravan, the Texas Advocacy Project (Domestic Violence Project)
Columbia Business Law Association, VP of Programming

Cornell University, Ithaca, NY

B.S. in Industrial and Labor Relations received May 2018

Honors: Dean's List (four years)

Activities: NCAA Div. I Varsity Cross Country and Track and Field (four years)—All East 4x800m Relay
Cornell Daily Sun, Staff Writer

EXPERIENCE

Wachtell, Lipton, Rosen & Katz, New York, NY

Summer 2023

Summer Associate

Researched and drafted multiple research memoranda regarding the standing of the client to bring suit against a charitable trust under applicable statutes and common law precedent. Assisted in drafting the opposition brief section arguing the client had standing to sue.

Columbia Law School, New York, NY

Research Assistant to Professor Goshen

Spring 2023

Researched and drafted two chapters for Professor Zohar Goshen's upcoming book regarding increases institutional investment firm control of public company equities and the impact on U.S. employees' wages.

Research Assistant to Professor Merrill

Fall 2022

Researched the history of FTC rulemaking authority by reviewing the legislative history of related bills.

United States Attorney's Office, S.D.N.Y., New York, NY

Legal Intern

Summer 2022

Drafted sentencing memorandum and opposition motions for submission to court. Researched case law to support establishing the existence of a conspiracy regardless of infighting amongst coconspirators for an ongoing trial.

Ankura Consulting Group, New York, NY

Senior Associate, Turnaround and Restructuring

March 2020 – August 2021

Part of debtor-side team managing the Chapter 11 restructuring of multi-million-dollar businesses. Created flow of funds analysis for the movement of assets through 5+ legal entities to inform negotiations with the Pension Backed Guaranty Corporation regarding its \$60M+ claim. Created more equitable severance plan for presentation to the special board of directors supported by sensitivity analyses of potential liability for over 2,000 employees.

Associate, Turnaround and Restructuring

September 2018 – March 2020

Managed first-day motion information gathering process in the filing of a Chapter 11 case. Assisted in managing the company cash flow budget and creating weekly reporting to distribute to various advisors. Managed lease claims adjudication process for all US retail locations, liaising with lead counsel, local counsel and landlords.

Royal Dutch Shell, Martinez, CA

Labor Relations Intern—East Bay Refinery

May 2017 – August 2017

Analyzed promotions and pay data to understand and address disparate treatment of female employees in internal promotion decisions; presented findings to plant leadership.

INTERESTS: Skiing, pickleball, *This American Life*, Boston Marathon participant



Registration Services

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 New York, NY 10027
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 registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/12/2023 09:26:29

Program: Juris Doctor

Kyle M Oefelein

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	A-
L6205-1	Financial Statement Analysis and Interpretation	Bartczak, Norman	3.0	A
L6169-2	Legislation and Regulation	Briffault, Richard	4.0	A
L6683-1	Supervised Research Paper	Morrison, Edward R.	1.0	A
L6822-1	Teaching Fellows	Seo, Sarah A.	3.0	CR

Total Registered Points: 14.0**Total Earned Points: 14.0**

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6536-1	Bankruptcy Law	Mann, Ronald	4.0	A
L6231-2	Corporations	Goshen, Zohar	4.0	A
L6238-1	Criminal Adjudication	Richman, Daniel	3.0	A-
L6675-1	Major Writing Credit	Morrison, Edward R.	0.0	CR
L6685-1	Serv-Unpaid Faculty Research Assistant	Merrill, Thomas W.	1.0	CR
L6683-1	Supervised Research Paper	Morrison, Edward R.	2.0	A

Total Registered Points: 14.0**Total Earned Points: 14.0**

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6108-4	Criminal Law	Seo, Sarah A.	3.0	A
L6256-1	Federal Income Taxation	Raskolnikov, Alex	4.0	A
L6121-34	Legal Practice Workshop II	Kintz, JoAnn Lynn	1.0	P
L6873-1	Nalsa Moot Court	Kintz, JoAnn Lynn	0.0	CR
L6116-4	Property	Merrill, Thomas W.	4.0	A-
L6118-2	Torts	Rapaczynski, Andrzej	4.0	A

Total Registered Points: 16.0**Total Earned Points: 16.0**